

out appropriate conservation projects by the Corps. However, nothing in this subchapter shall be construed to require any cost sharing for any project carried out directly by the Corps.

(b) Funds available under National and Community Service Act

In order to carry out the Public Lands Corps or to support resource assistants and qualified youth or conservation corps under this subchapter, the Secretary of the Interior and the Secretary of Agriculture shall be eligible to apply for and receive assistance under section 121(b) of the National and Community Service Act of 1990 [42 U.S.C. 12571(b)].

(Pub. L. 91-378, title II, §210, as added Pub. L. 103-82, title I, §105(6), Sept. 21, 1993, 107 Stat. 853.)

CHAPTER 38—FISHERY CONSERVATION AND MANAGEMENT

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SUBCHAPTER I—GENERALLY

§ 1801. Findings, purposes and policy

(a) Findings

The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

(2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.

(7) A national program for the development of fisheries which are underutilized or not utilized by the United States fishing industry, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

(8) The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States.

(b) Purposes

It is therefore declared to be the purposes of the Congress in this chapter—

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish, within the exclusive economic zone established by Presidential Proclamation 5030, dated March 10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species and Continental Shelf fishery resources;

(2) to support and encourage the implementation and enforcement of international fish-

ery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; and

(6) to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska, and to that end, to ensure that optimum yield determinations promote such development.

(c) Policy

It is further declared to be the policy of the Congress in this chapter—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this chapter;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this chapter;

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that avoid unnecessary waste of fish; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this chapter;

(5) to support and encourage active United States efforts to obtain internationally acceptable agreements which provide for effective conservation and management of fishery resources, and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation; and

(6) to foster and maintain the diversity of fisheries in the United States.

(Pub. L. 94-265, § 2, Apr. 13, 1976, 90 Stat. 331; Pub. L. 95-354, § 2, Aug. 28, 1978, 92 Stat. 519; Pub. L.

96-561, title II, § 233, Dec. 22, 1980, 94 Stat. 3299; Pub. L. 99-659, title I, § 101(c)(1), Nov. 14, 1986, 100 Stat. 3707; Pub. L. 101-627, title I, § 101, Nov. 28, 1990, 104 Stat. 4437; Pub. L. 102-251, title III, § 301(a), Mar. 9, 1992, 106 Stat. 62.)

AMENDMENT OF SUBSECTION (b)(1)

Pub. L. 102-251, title III, §§ 301(a), 308, Mar. 9, 1992, 106 Stat. 62, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, subsection (b)(1) is amended by inserting “, and fishery resources in the special areas” before the semicolon at the end.

REFERENCES IN TEXT

This chapter, referred to in subssecs. (b) and (c), was in the original “this Act”, meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note below and Tables.

Presidential Proclamation 5030, referred to in subsec. (b)(1), is set out under section 1453 of this title.

AMENDMENTS

1990—Subsec. (a)(8). Pub. L. 101-627, § 101(a), added par. (8).

Subsec. (b)(1)(A). Pub. L. 101-627, § 101(b)(1), struck out “except highly migratory species” after “fish”.

Subsec. (b)(5). Pub. L. 101-627, § 101(b)(2), substituted “exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of” for “prepare, monitor, and revise”.

Subsec. (c)(3). Pub. L. 101-627, § 101(c)(1), inserted “considers the effects of fishing on immature fish and encourages development of practical measures that avoid unnecessary waste of fish;” after “and enforcement;”.

Subsec. (c)(5). Pub. L. 101-627, § 101(c)(3), substituted “, and to secure agreements to regulate fishing by vessels or persons beyond the exclusive economic zones of any nation; and” for period at end.

Subsec. (c)(6). Pub. L. 101-627, § 101(c)(4), added par. (6).

1986—Subsec. (b)(1). Pub. L. 99-659, § 101(c)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;”.

Subsec. (c)(5). Pub. L. 99-659, § 101(c)(1)(B), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “to support and encourage continued active United States efforts to obtain an internationally acceptable treaty, at the Third United Nations Conference on the Law of the Sea, which provides for effective conservation and management of fishery resources.”

1980—Subsec. (b)(6). Pub. L. 96-561 inserted “, and to that end, to ensure that optimum yield determinations promote such development” after “fish off Alaska”.

1978—Subsec. (a)(7). Pub. L. 95-354, §2(a), substituted “the United States fishing industry” for “United States fishermen”.

Subsec. (b)(6). Pub. L. 95-354, §2(b), inserted requirement for development by the United States fishing industry.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102-251, set out as a note under section 773 of this title.

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104-43, title VI, §601, Nov. 3, 1995, 109 Stat. 391, provided that: “This title [enacting sections 1826d to 1826g of this title and provisions set out as a note under section 1826d of this title] may be cited as the ‘High Seas Driftnet Fishing Moratorium Protection Act’.”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-582, §1, Nov. 2, 1992, 106 Stat. 4900, provided that: “This Act [enacting sections 1826a to 1826c of this title and section 1707a of Title 46, Appendix, Shipping, amending sections 1362, 1371, 1852, and 1862 of this title, section 1978 of Title 22, Foreign Relations and Intercourse, and section 2110 of Title 46, repealing section 1111c of Title 46, Appendix, and enacting provisions set out as notes under sections 1823, 1826a, and 1861 of this title and section 2110 of Title 46] may be cited as the ‘High Seas Driftnet Fisheries Enforcement Act’.”

SHORT TITLE OF 1990 AMENDMENT

Section 1(a) of Pub. L. 101-627 provided that: “The Act [enacting sections 971b-1, 1385, and 1862 of this title, amending this section, sections 757d, 758e-5, 971a, 971b, 971d, 971h, 1371, 1802, 1811, 1812, 1821, 1822, 1824 to 1826, 1852 to 1861, 1882, 4005, 4006, 4008, 4103, and 4107 of this title, section 713c-3 of Title 15, Commerce and Trade, and section 1977 of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as notes under sections 971a, 1373, 1802, 1812, 1822, 1825, 1854, 4004, and 4005 of this title] may be cited as the ‘Fishery Conservation Amendments of 1990’.”

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100-220, §1, Dec. 29, 1987, 101 Stat. 1458, provided that: “This Act [enacting section 1912 of Title 33, Navigation and Navigable Waters, amending sections 1121 to 1131, 1901 to 1903, 1905, and 1907 to 1909 of Title 33, and enacting provisions set out as notes under this section, sections 1822 and 1823 of this title, sections 883a, 1121, 1125, 1901, 1902, and 2267 of Title 33, and section 6981 of Title 42, The Public Health and Welfare] may be cited as the ‘United States-Japan Fishery Agreement Approval Act of 1987’.”

SHORT TITLE OF 1980 AMENDMENT

Section 201 of title II of Pub. L. 96-561 provided that: “This title [enacting section 1511b of Title 15, Commerce and Trade, amending sections 917, 1801, 1821, 1824, 1852, and 1855 of this title, section 713c-3 of Title 15, sections 1972 and 1980 of Title 22, Foreign Relations and Intercourse, section 1321 of Title 33, Navigation and Navigable Waters, section 1843 of Title 43, Public Lands, and sections 1271, 1273, 1274, and 1275 of Title 46, Appendix, Shipping, and enacting provisions set out as notes under this section, sections 742c, 1821, and 1824 of this title, and section 1980 of Title 22] may be cited as the ‘American Fisheries Promotion Act’.”

Section 238 of title II of Pub. L. 96-561 provided that: “(a) Effective 15 days after the date of enactment of this title [Dec. 22, 1980], section 1 of the Fishery Con-

servation and Management Act of 1976 (16 U.S.C. 1801) [section 1 of Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331], is amended to read as follows: ‘That this Act [see Short Title note below for classification] may be cited as the ‘Magnuson Fishery Conservation and Management Act’.’”

“(b) Effective 15 days after the date of enactment of this title [Dec. 22, 1980], all references to the Fishery Conservation and Management Act of 1976 shall be redesignated as references to the Magnuson Fishery Conservation and Management Act.”

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-6, §1, Feb. 21, 1977, 91 Stat. 14, provided: “That this joint resolution [enacting section 1826 of this title, repealing sections 981 to 991 of this title, and enacting provisions set out as notes under sections 981 and 1823 of this title] may be cited as the ‘Fishery Conservation Zone Transition Act’.”

SHORT TITLE

Section 1 of Pub. L. 94-265, as amended by section 238(a) of Pub. L. 96-561 [see Short Title of 1980 Amendment note above] provided: “That this Act [enacting this chapter, amending section 971 of this title and sections 1972 and 1973 of Title 22, Foreign Relations and Intercourse, enacting provisions set out as notes under this section and sections 971, 1362, 1857 of this title, and sections 1972 and 1973 of Title 22, and repealing chapters 21 and 21A of this title] may be cited as the ‘Magnuson Fishery Conservation and Management Act’.”

EX. ORD. NO. 12962. RECREATIONAL FISHERIES

Ex. Ord. No. 12962, June 7, 1995, 60 F.R. 30769, provided: By the authority vested in me as President by the Constitution and the laws of the United States of America, and in furtherance of the purposes of the Fish and Wildlife Act of 1956 (16 U.S.C. 742a-d, and e-j), the Fish and Wildlife Coordination Act (16 U.S.C. 661-666c), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), and the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801-1882), and other pertinent statutes, and in order to conserve, restore, and enhance aquatic systems to provide for increased recreational fishing opportunities nationwide, it is ordered as follows:

SECTION 1. *Federal Agency Duties.* Federal agencies shall, to the extent permitted by law and where practicable, and in cooperation with States and Tribes, improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities by: (a) developing and encouraging partnerships between governments and the private sector to advance aquatic resource conservation and enhance recreational fishing opportunities;

(b) identifying recreational fishing opportunities that are limited by water quality and habitat degradation and promoting restoration to support viable, healthy, and, where feasible, self-sustaining recreational fisheries;

(c) fostering sound aquatic conservation and restoration endeavors to benefit recreational fisheries;

(d) providing access to and promoting awareness of opportunities for public participation and enjoyment of U.S. recreational fishery resources;

(e) supporting outreach programs designed to stimulate angler participation in the conservation and restoration of aquatic systems;

(f) implementing laws under their purview in a manner that will conserve, restore, and enhance aquatic systems that support recreational fisheries;

(g) establishing cost-share programs, under existing authorities, that match or exceed Federal funds with nonfederal contributions;

(h) evaluating the effects of Federally funded, permitted, or authorized actions on aquatic systems and recreational fisheries and document those effects relative to the purpose of this order; and

(i) assisting private landowners to conserve and enhance aquatic resources on their lands.

SEC. 2. *National Recreational Fisheries Coordination Council.* A National Recreational Fisheries Coordination Council ("Coordination Council") is hereby established. The Coordination Council shall consist of seven members, one member designated by each of the following Secretaries—Interior, Commerce, Agriculture, Energy, Transportation, and Defense—and one by the Administrator of the Environmental Protection Agency. The Coordination Council shall: (a) ensure that the social and economic values of healthy aquatic systems that support recreational fisheries are considered by Federal agencies in the course of their actions;

(b) reduce duplicative and cost-inefficient programs among Federal agencies involved in conserving or managing recreational fisheries;

(c) share the latest resource information and management technologies to assist in the conservation and management of recreational fisheries;

(d) assess the implementation of the Conservation Plan required under section 3 of this order; and

(e) develop a biennial report of accomplishments of the Conservation Plan.

The representatives designated by the Secretaries of Commerce and the Interior shall cochair the Coordination Council.

SEC. 3. *Recreational Fishery Resources Conservation Plan.* (a) Within 12 months of the date of this order, the Coordination Council, in cooperation with Federal agencies, States, and Tribes, and after consulting with the Federally chartered Sport Fishing and Boating Partnership Council, shall develop a comprehensive Recreational Fishery Resources Conservation Plan ("Conservation Plan").

(b) The Conservation Plan will set forth a 5-year agenda for Federal agencies identified by the Coordination Council. In so doing, the Conservation Plan will establish, to the extent permitted by law and where practicable; (1) measurable objectives to conserve and restore aquatic systems that support viable and healthy recreational fishery resources, (2) actions to be taken by the identified Federal agencies, (3) a method of ensuring the accountability of such Federal agencies, and (4) a comprehensive mechanism to evaluate achievements. The Conservation Plan will, to the extent practicable, be integrated with existing plans and programs, reduce duplication, and will include recommended actions for cooperation with States, Tribes, conservation groups, and the recreational fisheries community.

SEC. 4. *Joint Policy for Administering the Endangered Species Act of 1973.* All Federal agencies will aggressively work to identify and minimize conflicts between recreational fisheries and their respective responsibilities under the Endangered Species Act of 1973 ("ESA") (16 U.S.C. 1531 *et seq.*). Within 6 months of the date of this order, the Fish and Wildlife Service and the National Marine Fisheries Service will promote compatibility and reduce conflicts between the administration of the ESA and recreational fisheries by developing a joint agency policy that will: (1) ensure consistency in the administration of the ESA between and within the two agencies, (2) promote collaboration with other Federal, State, and Tribal fisheries managers, and (3) improve and increase efforts to inform nonfederal entities of the requirements of the ESA.

SEC. 5. *Sport Fishing and Boating Partnership Council.* To assist in the implementation of this order, the Secretary of the Interior shall expand the role of the Sport Fishing and Boating Partnership Council to: (a) monitor specific Federal activities affecting aquatic systems and the recreational fisheries they support;

(b) review and evaluate the relation of Federal policies and activities to the status and conditions of recreational fishery resources; and

(c) prepare an annual report of its activities, findings, and recommendations for submission to the Coordination Council.

SEC. 6. *Judicial Review.* This order is intended only to improve the internal management of the executive

branch and it is not intended to create any right, benefit or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any other person.

WILLIAM J. CLINTON.

§ 1802. Definitions

As used in this chapter, unless the context otherwise requires—

(1) The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that—

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(3) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

(4) The term "Continental Shelf fishery resources" means the following:

COLEENTERATA

Bamboo Coral—*Acanella* spp.;
Black Coral—*Antipathes* spp.;
Gold Coral—*Callogorgia* spp.;
Precious Red Coral—*Corallium* spp.;
Bamboo Coral—*Keratois* spp.; and
Gold Coral—*Parazoanthus* spp.

CRUSTACEA

Tanner Crab—*Chionoecetes tanneri*;
Tanner Crab—*Chionoecetes opilio*;
Tanner Crab—*Chionoecetes angulatus*;
Tanner Crab—*Chionoecetes bairdi*;
King Crab—*Paralithodes camtschatica*;
King Crab—*Paralithodes platypus*;
King Crab—*Paralithodes brevipes*;
Lobster—*Homarus americanus*;
Dungeness Crab—*Cancer magister*;
California King Crab—*Paralithodes californiensis*;
California King Crab—*Paralithodes rathbuni*;
Golden King Crab—*Lithodes aequispinus*;
Northern Stone Crab—*Lithodes maja*;
Stone Crab—*Menippe mercenaria*; and
Deep-sea Red Crab—*Geryon quinquedens*.

MOLLUSKS

Red Abalone—*Haliotis rufescens*;

Pink Abalone—*Haliotis corrugata*;
 Japanese Abalone—*Haliotis*
kamtschatkana;
 Queen Conch—*Strombus gigas*;
 Surf Clam—*Spisula solidissima*; and
 Ocean Quahog—*Arctica islandica*.

SPONGES

Glove Sponge—*Spongia cheiris*;
 Sheepswool Sponge—*Hippiospongia lachne*;
 Grass Sponge—*Spongia graminea*; and
 Yellow Sponge—*Spongia barbera*.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil,

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this chapter.

(5) The term "Council" means any Regional Fishery Management Council established under section 1852 of this title.

(6) The term "exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this chapter, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

(7) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds.

(8) The term "fishery" means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(9) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(10) The term "fishing" means—

(A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

(C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(11) The term "fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for—

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing.

(12) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(13) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

(14) The term "highly migratory species" means tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*).

(15) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

(16) The term "large-scale driftnet fishing" means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of one and one-half miles or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(17) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific States Marine Fisheries Commission.

(18) The term "migratory range" means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

(19) The term "national standards" means the national standards for fishery conservation and management set forth in section 1851 of this title.

(20) The term "observer" means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this chapter.

(21) The term "optimum", with respect to the yield from a fishery, means the amount of fish—

(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

(22) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or for-

eign government or any entity of any such government.

(23) The term “Secretary” means the Secretary of Commerce or his designee.

(24) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(25) The term “stock of fish” means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(26) The term “treaty” means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

(27) The term “tuna species” means the following:

Albacore Tuna—*Thunnus alalunga*;
Bigeye Tuna—*Thunnus obesus*;
Bluefin Tuna—*Thunnus thynnus*;
Skipjack Tuna—*Katsuwonus pelamis*; and
Yellowfin Tuna—*Thunnus albacares*.

(28) The term “United States”, when used in a geographical context, means all the States thereof.

(29) The term “United States fish processors” means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

(30) The term “United States harvested fish” means fish caught, taken, or harvested by vessels of the United States within any fishery for which a fishery management plan prepared under subchapter IV of this chapter or a preliminary fishery management plan prepared under section 1821(h) of this title has been implemented.

(31) The term “vessel of the United States” means—

(A) any vessel documented under chapter 121 of title 46;

(B) any vessel numbered in accordance with chapter 123 of title 46 and measuring less than 5 net tons;

(C) any vessel numbered in accordance with chapter 123 of title 46 and used exclusively for pleasure; or

(D) any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

(32) The term “waters of a foreign nation” means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.

(Pub. L. 94-265, § 3, Apr. 13, 1976, 90 Stat. 333; Pub. L. 95-354, § 3, Aug. 28, 1978, 92 Stat. 519; Pub. L. 97-453, § 15(a), Jan. 12, 1983, 96 Stat. 2492; Pub. L. 99-659, title I, §§ 101(a), 112, Nov. 14, 1986, 100 Stat. 3706, 3715; Pub. L. 100-239, § 2, Jan. 11, 1988, 101 Stat. 1778; Pub. L. 101-627, title I, § 102(a), title X, § 1001(c), Nov. 28, 1990, 104 Stat. 4438, 4468; Pub. L. 102-251, title III, § 301(b), Mar. 9, 1992, 106 Stat. 62.)

AMENDMENT OF SECTION

Pub. L. 102-251, title III, §§ 301(b), 308, Mar. 9, 1992, 106 Stat. 62, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulations effective until the date on which the Agreement enters into force for the United States, this section is amended by redesignating paragraphs (24) to (32) as (25) to (33), respectively, and by inserting after paragraph (23) the following new paragraph:

(24) The term “special areas” means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

REFERENCES IN TEXT

Proclamation Numbered 5030, referred to in par. (6), is set out under section 1453 of this title.

AMENDMENTS

1990—Par. (7). Pub. L. 101-627, § 102(a)(2), substituted “and birds” for “, birds, and highly migratory species”.

Par. (14). Pub. L. 101-627, § 102(a)(3), amended par. (14) generally. Prior to amendment, par. (14) read as follows: “The term ‘highly migratory species’ means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.”

Par. (16). Pub. L. 101-627, § 102(a)(4), added par. (16). Former par. (16) redesignated (17).

Par. (17). Pub. L. 101-627, § 102(a)(1), redesignated par. (16) as (17). Former par. (17) redesignated (19).

Par. (18). Pub. L. 101-627, § 102(a)(5), added par. (18). Former par. (18) redesignated (21).

Par. (19). Pub. L. 101-627, § 102(a)(1), redesignated par. (17) as (19). Former par. (19) redesignated (22).

Par. (20). Pub. L. 101-627, § 102(a)(6), added par. (20). Former par. (20) redesignated (23).

Pars. (21) to (26). Pub. L. 101-627, § 102(a)(1), redesignated pars. (18) to (23) as (21) to (26), respectively. Former pars. (24) to (26) redesignated (28) to (30), respectively.

Par. (27). Pub. L. 101-627, § 102(a)(7), added par. (27). Former par. (27) redesignated (31).

Pars. (28) to (31). Pub. L. 101-627, § 102(a)(1), redesignated pars. (24) to (27) as (28) to (31), respectively.

Par. (32). Pub. L. 101-627, § 102(a)(8), added par. (32).

1988—Par. (27). Pub. L. 100-239 amended par. (27) generally. Prior to amendment, par. (27) read as follows: “The term ‘vessel of the United States’ means—

“(A) any vessel documented under the laws of the United States;

“(B) any vessel numbered in accordance with the Federal Boat Safety Act of 1971 and measuring less than 5 net tons; or

“(C) any vessel numbered under the Federal Boat Safety Act of 1971 and used exclusively for pleasure.”

1986—Par. (4). Pub. L. 99-659, § 112, in provisions under heading “Mollusks” substituted “*Arctica islandica*” for “*Artica islandica*” and under heading “Sponges” substituted “*Spongia cheiris*” for “*Hippiospongia canaliculata*”.

Pars. (6) to (8). Pub. L. 99-659, §101(a), added par. (6), redesignated former pars. (6) and (7) as (7) and (8), respectively, and struck out former par. (8) which defined “fishery conservation zone” as the fishery conservation zone established by section 1811 of this title.

1983—Par. (27). Pub. L. 97-453 designated existing provisions as subpar. (A), struck out “or registered under the laws of any State” after “United States”, and added subpars. (B) and (C).

1978—Pars. (25) to (27). Pub. L. 95-354 added pars. (25) and (26) and redesignated former par. (25) as (27).

CHANGE OF NAME

“Pacific States Marine Fisheries Commission” substituted for “Pacific Marine Fisheries Commission” in par. (17) pursuant to section 1001(c) of Pub. L. 101-627, set out below.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102-251, set out as a note under section 773 of this title.

REDESIGNATION OF PACIFIC MARINE FISHERIES COMMISSION AS PACIFIC STATES MARINE FISHERIES COMMISSION

Section 1001 of Pub. L. 101-627 provided that:

“(a) IN GENERAL.—The Congress consents to and approves of the amendments described in subsection (b) to the interstate compact which constituted the Pacific Marine Fisheries Commission, approved by the Act of July 24, 1947 (61 Stat. 419; hereinafter in this section referred to as the ‘compact’).

“(b) AMENDMENT DESCRIBED.—The amendments referred to in subsection (a) are the amendments approved and ratified before the effective date of this section [Nov. 28, 1990] by the contracting States to the compact, which—

“(1) amend Article III of the compact to redesignate the Pacific Marine Fisheries Commission as the ‘Pacific States Marine Fisheries Commission’; and

“(2) make such other amendments to the compact as are necessary solely to conform the text of the compact to the amendment described in paragraph (1).

“(c) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Pacific Marine Fisheries Commission constituted by the compact is deemed to be a reference to the ‘Pacific States Marine Fisheries Commission’.”

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 917a, 971, 971d, 1383a, 1387, 3377, 3601 of this title; title 22 sections 1971, 1980; title 46 sections 8103, 8704; title 46 App. section 1271; title 48 section 1904.

SUBCHAPTER II—UNITED STATES RIGHTS AND AUTHORITY REGARDING FISH AND FISHERY RESOURCES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 22 section 1972.

§ 1811. United States sovereign rights to fish and fishery management authority

(a) In the exclusive economic zone

Except as provided in section 1812 of this title, the United States claims, and will exercise in

the manner provided for in this chapter, sovereign rights and exclusive fishery management authority over all fish, and all Continental Shelf fishery resources, within the exclusive economic zone.

(b) Beyond the exclusive economic zone

The United States claims, and will exercise in the manner provided for in this chapter, exclusive fishery management authority over the following:

(1) All anadromous species throughout the migratory range of each such species beyond the exclusive economic zone; except that that management authority does not extend to such species during the time they are found within any waters of a foreign nation.

(2) All Continental Shelf fishery resources beyond the exclusive economic zone.

(Pub. L. 94-265, title I, §101, Apr. 13, 1976, 90 Stat. 336; Pub. L. 99-659, title I, §101(b), Nov. 14, 1986, 100 Stat. 3706; Pub. L. 101-627, title I, §102(b), Nov. 28, 1990, 104 Stat. 4438; Pub. L. 102-251, title III, §301(c), Mar. 9, 1992, 106 Stat. 62.)

AMENDMENT OF SECTION

Pub. L. 102-251, title III, §§301(c), 308, Mar. 9, 1992, 106 Stat. 62, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, subsection (a) is amended by inserting “and special areas” before the period at the end and subsection (b) is amended by inserting after paragraph (2) the following new paragraph:

(3) All fishery resources in the special areas.

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

1990—Subsec. (b)(1). Pub. L. 101-627 substituted “any waters of a foreign nation” for “any foreign nation’s territorial sea or exclusive economic zone (or the equivalent), to the extent that that sea or zone is recognized by the United States”.

1986—Pub. L. 99-659 amended section generally. Prior to amendment, section read as follows: “There is established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. The inner boundary of the fishery conservation zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.”

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary,

signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102-251, set out as a note under section 773 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 773, 1827 of this title.

§ 1812. Highly migratory species

The United States shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout their range, both within and beyond the exclusive economic zone.

(Pub. L. 94-265, title I, § 102, Apr. 13, 1976, 90 Stat. 336; Pub. L. 99-659, title I, § 101(b), Nov. 14, 1986, 100 Stat. 3707; Pub. L. 101-627, title I, § 103(a), Nov. 28, 1990, 104 Stat. 4439.)

AMENDMENTS

1990—Pub. L. 101-627 amended section generally. Prior to amendment, section read as follows: “The sovereign rights and exclusive fishery management authority asserted by the United States under section 1811 of this title over fish do not include, and may not be construed to extend to, highly migratory species of fish.”

1986—Pub. L. 99-659 amended section generally. Prior to amendment, section read as follows: “The United States shall exercise exclusive fishery management authority, in the manner provided for in this chapter, over the following:

“(1) All fish within the fishery conservation zone.

“(2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign nation’s territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.

“(3) All Continental Shelf fishery resources beyond the fishery conservation zone.”

EFFECTIVE DATE OF 1990 AMENDMENT

Section 103(c) of Pub. L. 101-627 provided that: “The amendments made by this section [amending this section] shall take effect on January 1, 1992.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1811 of this title.

§ 1813. Omitted

CODIFICATION

Section, Pub. L. 94-265, title I, § 103, Apr. 13, 1976, 90 Stat. 336, which related to exclusion of highly migratory species of fish from exclusive fishery management authority, was omitted in the general revision of this subchapter by section 101(b) of Pub. L. 99-659. See section 1812 of this title.

SUBCHAPTER III—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

§ 1821. Foreign fishing

(a) In general

After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone,

or for anadromous species or Continental Shelf fishery resources beyond the exclusive economic zone, unless such foreign fishing—

(1) is authorized under subsection (b) or (c) of this section;

(2) is not prohibited by subsection (g) of this section; and

(3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 1824 of this title.

(b) Existing international fishery agreements

Foreign fishing described in subsection (a) of this section may be conducted pursuant to an international fishery agreement (subject to the provisions of section 1822(b) or (c) of this title), if such agreement—

(1) was in effect on April 13, 1976; and

(2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

(c) Governing international fishery agreements

Foreign fishing described in subsection (a) of this section may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 1823 of this title. Any such international fishery agreement shall hereafter in this chapter be referred to as a “governing international fishery agreement”. Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this chapter. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:

(1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this chapter, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.

(2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that—

(A) any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title) be permitted—

(i) to board, and search or inspect, any such vessel at any time,

(ii) to make arrests and seizures provided for in section 1861(b) of this title whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 1857 of this title, and

(iii) to examine and make notations on the permit issued pursuant to section 1824 of this title for such vessel;

(B) the permit issued for any such vessel pursuant to section 1824 of this title be prominently displayed in the wheelhouse of such vessel;

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each such vessel;

(D) United States observers required under subsection (i) of this section be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel;

(E) any fees required under section 1824(b)(10) of this title be paid in advance;

(F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and

(G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation;

and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, harvest an amount of fish which exceeds such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e) of this section.

(4) The foreign nation will—

(A) apply, pursuant to section 1824 of this title, for any required permits;

(B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel;

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 1824(a) of this title and the applicable conditions and restrictions established under section 1824(b)(7) of this title; and

(D) take, or refrain from taking, as appropriate, actions of the kind referred to in subsection (e)(1) of this section in order to receive favorable allocations under such subsection.

(d) Total allowable level of foreign fishing

The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with this chapter.

(e) Allocation of allowable level

(1)(A) The Secretary of State, in cooperation with the Secretary, may make allocations to foreign nations from the total allowable level of

foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States.

(B) From the determinations made under subparagraph (A), the Secretary of State shall compute the aggregate of all of the fishery allocations made to each foreign nation.

(C) The Secretary of State shall initially release to each foreign nation for harvesting up to 50 percent of the allocations aggregate computed for such nation under subparagraph (B), and such release of allocation shall be apportioned by the Secretary of State, in cooperation with the Secretary, among the individual fishery allocations determined for that nation under subparagraph (A). The basis on which each apportionment is made under this subparagraph shall be stated in writing by the Secretary of State.

(D) After the initial release of fishery allocations under subparagraph (C) to a foreign nation, any subsequent release of an allocation for any fishery to such nation shall only be made—

(i) after the lapse of such period of time as may be sufficient for purposes of making the determination required under clause (ii); and

(ii) if the Secretary of State and the Secretary, after taking into account the size of the allocation for such fishery and the length and timing of the fishing season, determine in writing that such nation is complying with the purposes and intent of this paragraph with respect to such fishery.

If the foreign nation is not determined under clause (ii) to be in such compliance, the Secretary of State shall reduce, in a manner and quantity he considers to be appropriate (I) the remainder of such allocation, or (II) if all of such allocation has been released, the next allocation of such fishery, if any, made to such nation.

(E) The determinations required to be made under subparagraphs (A) and (D)(ii), and the apportionments required to be made under subparagraph (C), with respect to a foreign nation shall be based on—

(i) whether, and to what extent, such nation imposes tariff barriers or nontariff barriers on the importation, or otherwise restricts the market access, of both United States fish and fishery products, particularly fish and fishery products for which the foreign nation has requested an allocation;

(ii) whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;

(iii) whether, and to what extent, such nation and the fishing fleets of such nation have cooperated with the United States in the enforcement of United States fishing regulations;

(iv) whether, and to what extent, such nation requires the fish harvested from the ex-

clusive economic zone for its domestic consumption;

(v) whether, and to what extent, such nation otherwise contributes to, or fosters the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

(vi) whether, and to what extent, the fishing vessels of such nation have traditionally engaged in fishing in such fishery;

(vii) whether, and to what extent, such nation is cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and

(viii) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.

(2)(A) For the purposes of this paragraph—

(i) The term “certification” means a certification made by the Secretary that nationals of a foreign country, directly or indirectly, are conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling. A certification under this section shall also be deemed a certification for the purposes of section 1978(a) of title 22.

(ii) The term “remedial period” means the 365-day period beginning on the date on which a certification is issued with respect to a foreign country.

(B) If the Secretary issues a certification with respect to any foreign country, then each allocation under paragraph (1) that—

(i) is in effect for that foreign country on the date of issuance; or

(ii) is not in effect on such date but would, without regard to this paragraph, be made to the foreign country within the remedial period;

shall be reduced by the Secretary of State, in consultation with the Secretary, by not less than 50 percent.

(C) The following apply for purposes of administering subparagraph (B) with respect to any foreign country:

(i) If on the date of certification, the foreign country has harvested a portion, but not all, of the quantity of fish specified under any allocation, the reduction under subparagraph (B) for that allocation shall be applied with respect to the quantity not harvested as of such date.

(ii) If the Secretary notified the Secretary of State that it is not likely that the certification of the foreign country will be terminated under section 1978(d) of title 22 before the close of the period for which an allocation is applicable or before the close of the remedial period (whichever close first occurs) the Secretary of State, in consultation with the Secretary, shall reallocate any portion of any reduction made under subparagraph (B) among one or more foreign countries for which no certification is in effect.

(iii) If the certification is terminated under such section 1978(d) of title 22 during the remedial period, the Secretary of State shall return to the foreign country that portion of any allocation reduced under subparagraph (B) that was not reallocated under clause (ii); unless the harvesting of the fish covered by the allocation is otherwise prohibited under this chapter.

(iv) The Secretary may refund or credit, by reason of reduction of any allocation under this paragraph, any fee paid under section 1824 of this title.

(D) If the certification of a foreign country is not terminated under section 1978(d) of title 22 before the close of the last day of the remedial period, the Secretary of State—

(i) with respect to any allocation made to that country and in effect (as reduced under subparagraph (B)) on such last day, shall rescind, effective on and after the day after such last day, any unharvested portion of such allocation; and

(ii) may not thereafter make any allocation to that country under paragraph (1) until the certification is terminated.

(f) Repealed. Pub. L. 103-236, title I, § 139(24), Apr. 30, 1994, 108 Stat. 399

(g) Reciprocity

Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

(h) Preliminary fishery management plans

The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 1824(b) of this title shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to subchapter IV of this chapter, before March 1, 1977. To the extent practicable, each such plan—

(1) shall contain a preliminary description of the fishery and a preliminary determination as to—

(A) the optimum yield from such fishery;

(B) when appropriate, the capacity and extent to which United States fish processors will process that portion of such optimum yield that will be harvested by vessels of the United States; and

(C) the total allowable level of foreign fishing with respect to such fishery;

(2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 1853(a)(5) of this title; and

(4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation

and management measures applicable to foreign fishing which—

(A) are determined to be necessary and appropriate for the conservation and management of such fishery,

(B) are consistent with the national standards, the other provisions of this chapter, and other applicable law, and

(C) are described in section 1853(b)(2), (3), (4), (5), and (7) of this title.

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to subchapter IV of this chapter, with respect to such fishery. The Secretary may, in accordance with section 553 of title 5, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 1855 of this title.

(i) Full observer coverage program

(1)(A) Except as provided in paragraph (2), the Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the exclusive economic zone.

(B) The Secretary shall by regulation prescribe minimum health and safety standards that shall be maintained aboard each foreign fishing vessel with regard to the facilities provided for the quartering of, and the carrying out of observer functions by, United States observers.

(2) The requirement in paragraph (1) that a United States observer be placed aboard each foreign fishing vessel may be waived by the Secretary if he finds that—

(A) in a situation where a fleet of harvesting vessels transfers its catch taken within the exclusive economic zone to another vessel, aboard which is a United States observer, the stationing of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being complied with;

(B) the time during which a foreign fishing vessel will engage in fishing within the exclusive economic zone will be of such short duration that the placing of a United States observer aboard the vessel would be impractical; or

(C) for reasons beyond the control of the Secretary, an observer is not available.

(3) Observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this chapter; and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate.

(4) In addition to any fee imposed under section 1824(b)(10) of this title and section 1980(e) of title 22 with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 1824 of this title, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 1824(b)(10) of this title. All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).

(5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(6) If at any time the requirement set forth in paragraph (1) cannot be met because of insufficient appropriations, the Secretary shall, in implementing a supplementary observer program:

(A) certify as observers, for the purposes of this subsection, individuals who are citizens or nationals of the United States and who have the requisite education or experience to carry out the functions referred to in paragraph (3);

(B) establish standards of conduct for certified observers equivalent to those applicable to Federal personnel;

(C) establish a reasonable schedule of fees that certified observers or their agents shall be paid by the owners and operators of foreign fishing vessels for observer services; and

(D) monitor the performance of observers to ensure that it meets the purposes of this chapter.

(j) Recreational fishing

Notwithstanding any other provision of this subchapter, foreign fishing vessels which are not operated for profit may engage in recreational fishing within the exclusive economic zone and the waters within the boundaries of a State subject to obtaining such permits, paying such reasonable fees, and complying with such conditions and restrictions as the Secretary and the Governor of the State (or his designee) shall impose as being necessary or appropriate to insure that the fishing activity of such foreign vessels within such zone or waters, respectively, is consistent with all applicable Federal and State laws and any applicable fishery management plan implemented under section 1855 of this title. The Secretary shall consult with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating in formulating the conditions and restrictions to

be applied by the Secretary under the authority of this subsection.

(Pub. L. 94-265, title II, §201, Apr. 13, 1976, 90 Stat. 337; Pub. L. 95-354, §4(1)-(4), Aug. 28, 1978, 92 Stat. 519, 520; Pub. L. 96-61, §3(a), Aug. 15, 1979, 93 Stat. 407; Pub. L. 96-118, §5, Nov. 16, 1979, 93 Stat. 860; Pub. L. 96-561, title II, §§230, 231(a), 236, Dec. 22, 1980, 94 Stat. 3296, 3297, 3299; Pub. L. 97-453, §2(a), Jan. 12, 1983, 96 Stat. 2481; Pub. L. 98-623, title IV, §404(1), (2), Nov. 8, 1984, 98 Stat. 3408; Pub. L. 99-386, title II, §206(a), Aug. 22, 1986, 100 Stat. 823; Pub. L. 99-659, title I, §§101(c)(2), 103(a), Nov. 14, 1986, 100 Stat. 3707, 3708; Pub. L. 101-627, title I, §104, Nov. 28, 1990, 104 Stat. 4439; Pub. L. 102-251, title III, §301(d), Mar. 9, 1992, 106 Stat. 63; Pub. L. 103-236, title I, §139(24), Apr. 30, 1994, 108 Stat. 399.)

AMENDMENT OF SECTION

Pub. L. 102-251, title III, §301(d), 308, Mar. 9, 1992, 106 Stat. 63, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, this section is amended:

(1) in subsection (a), (A) by inserting “within the special areas,” immediately before “or for anadromous species” and (B) by striking “beyond the exclusive economic zone” and inserting in lieu thereof “beyond such zone or areas”;

(2) in subsection (e)(1)(E)(IV)[iv], by inserting “or special areas” immediately after “exclusive economic zone”;

(3) in subsection (i), (A) by inserting “or special areas” immediately before the period at the end of paragraph (1)(A), (B) by inserting “or special areas” immediately after “exclusive economic zone” in paragraph (2)(A), and (C) by inserting “or special areas” immediately after “exclusive economic zone” in paragraph (2)(B); and

(4) in subsection (j), (A) by inserting “, special areas,” immediately after “exclusive economic zone”, and (B) by inserting “, areas,” immediately after “such zone”.

REFERENCES IN TEXT

This chapter, referred to in subsecs. (c), (d), (e)(2)(C)(iii), (h), and (i)(3), (6)(D), was in the original “this Act”, meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

1994—Subsec. (f). Pub. L. 103-236 struck out heading and text of subsec. (f). Text read as follows: “The Secretary and the Secretary of State shall prepare and submit a report to the Congress and the President, not later than July 1 of each year, setting forth—

“(1) a list of species of all allocations made to foreign nations pursuant to subsection (e) of this section and all permits issued pursuant to section 1824(b)(6)(B) of this title; and

“(2) all tariff and nontariff trade barriers imposed by such nations on the importation of such species from the United States.”

1990—Subsec. (d). Pub. L. 101-627 amended subsec. (d) generally, limiting the total allowable level of foreign fishing, with respect to any fishery subject to the exclusive management authority of the United States, to only that part of the potential fishery yield which is not harvested by United States fishermen and deleting the alternative method of determining the total allowable level of foreign fishing based on the annual fishing level for each harvesting season after the 1980 harvesting season.

1986—Subsecs. (a), (e)(1)(E)(iv). Pub. L. 99-659, §101(c)(2), substituted “exclusive economic zone” for “fishery conservation zone” in two places.

Subsec. (f). Pub. L. 99-386 substituted “The Secretary and the Secretary of State shall” for “The Secretary of the Treasury, in cooperation with the Secretary and the Secretary of State, shall”.

Subsec. (i)(1). Pub. L. 99-659, §§101(c)(2), 103(a)(1), (2), designated existing provisions as subpar. (A), substituted “exclusive economic zone” for “fishery conservation zone”, and added subpar. (B).

Subsec. (i)(2)(A). Pub. L. 99-659, §101(c)(2), substituted “exclusive economic zone” for “fishery conservation zone”.

Subsec. (i)(2)(B). Pub. L. 99-659, §103(a)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “with respect to any foreign fishing vessel while it is engaged in fishing within the fishery conservation zone—

“(i) the time during which the vessel engages in such fishing will be of such short duration that the placing of a United States observer aboard the vessel would be impractical, or

“(ii) the facilities of the vessel for the quartering of a United States observer, or for the carrying out of observer functions, are so inadequate or unsafe that the health or safety of an observer would be jeopardized; or”

Subsec. (j). Pub. L. 99-659, §101(c)(2), substituted “exclusive economic zone” for “fishery conservation zone”.

1984—Subsec. (d)(4). Pub. L. 98-623, §404(1), substituted “may allocate” for “shall allocate” in provisions preceding subpar. (A).

Subsec. (e)(1)(A). Pub. L. 98-623, §404(2)(A), substituted “may make allocations to foreign nations from” for “shall determine the allocation among foreign nations of”.

Subsec. (e)(1)(E)(i). Pub. L. 98-623, §404(2)(B), substituted “both United States fish and fishery products” for “United States fish or fishery products” and inserted “, particularly fish and fishery products for which the foreign nation has requested an allocation”.

Subsec. (e)(1)(E)(ii). Pub. L. 98-623, §404(2)(C), amended provisions generally, thereby substituting “in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation” for “in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen”.

1983—Subsec. (c)(2)(D). Pub. L. 97-453, §2(a)(1), amended par. (D) generally, substituting “United States observers required under subsection (i) of this section be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel” for “duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers”.

Subsec. (c)(4)(D). Pub. L. 97-453, §2(a)(2), added subpar. (D).

Subsec. (d)(4). Pub. L. 97-453, §2(a)(3), substituted “may be allocated” for “shall be allocated” after “then such portion or part”.

Subsec. (e)(1). Pub. L. 97-453, §2(a)(4), designated first sentence of existing provisions as subpar. (A), added subpars. (B), (C), and (D), and redesignated former subpars. (A) through (H) as cls. (i) through (viii) of subpar. (E), respectively.

Subsec. (i)(3). Pub. L. 97-453, §2(a)(5)(A)(i), substituted provision that observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this chapter and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate, for provision that United States observers, while aboard foreign fishing vessels, were to carry out such scientific and other functions as the Secretary deemed necessary or appropriate to carry out the purposes of this chapter.

Subsec. (i)(6). Pub. L. 97-453, §2(a)(5)(A)(ii), added par. (6).

Subsec. (j). Pub. L. 97-453, §2(a)(6), added subsec. (j).
1980—Subsec. (d). Pub. L. 96-561, §230, designated existing provision as par. (2), substituted provision prescribing the total allowable level of foreign fishing with respect to any United States fishery for each harvesting season after the 1980 harvesting season as the level representing that portion of the optimum yield of such fishery that will not be harvested by vessels of the United States as determined in accordance with provisions of this chapter, other than those relating to the determination of annual fishing levels, or the annual fishing levels determined pursuant to par. (3) of this section for the harvesting season for provision prescribing the total allowable level of foreign fishing with respect to any fishery subject to the exclusive fishery management authority of the United States as that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with provisions of this chapter, and added pars. (1), (3), and (4).

Subsec. (e). Pub. L. 96-561, §231(a), substituted “All such determinations shall be made by the Secretary of State and the Secretary on the basis of” for “In making any such determination, the Secretary of State and the Secretary shall consider”, added subpars. (A), (B), (D), and (E), redesignated former subpars. (A), (B), and (D) as (F), (G), and (H), respectively, and in subpar. (C) substituted determination where such nations and the fishing fleets of such nations have cooperated with the United States in enforcement of United States fishing regulations for determination where such nations have cooperated with the United States in enforcement and with respect to conservation and management of fishery resources.

Subsec. (i). Pub. L. 96-561, §236, added subsec. (i).

1979—Subsec. (e). Pub. L. 96-61 designated existing provisions as par. (1), redesignated pars. (1) through (4) as subpars. (A) to (D), and added par. (2).

Subsec. (e)(2)(D)(i). Pub. L. 96-118 substituted “unharvested” for “harvested”.

1978—Subsec. (a)(2). Pub. L. 95-354, §4(1), substituted “(g)” for “(f)”.

Subsec. (c)(3). Pub. L. 95-354, §4(2), substituted “harvest an amount of fish which exceeds” for “exceed”.

Subsecs. (f) to (h). Pub. L. 95-354, §4(3), (4), added subsec. (f), redesignated former subsecs. (f) and (g) as (g) and (h), and in subsec. (h)(1), as so redesignated, set out existing provisions as cls. (A) and (C) and added cl. (B).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102-251, set out as a note under section 773 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 2(b) of Pub. L. 97-453 provided that: “The amendments made by subsection (a)(1) and (5)(A)(ii) [amending this section] shall take effect January 1, 1984.”

EFFECTIVE DATE OF 1980 AMENDMENT

Sections 231(b), 238(b) of Pub. L. 96-561 provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to the 1981 harvesting season and harvesting seasons thereafter (as defined in section 201(d)(1) of the Magnuson Fishery Conservation and Management Act, as amended by section 301) [subsec. (d)(1) of this section].”

Sections 237, 238(b) of Pub. L. 96-561 provided that: “The amendment made by section 236 [amending this section] shall take effect October 1, 1981, and shall apply with respect to permits issued under section 204 of the Magnuson Fishery Conservation and Management Act [section 1824 of this title] after December 31, 1981.”

FOREIGN FISHING FOR ATLANTIC HERRING AND MACKEREL

Pub. L. 104-43, title VIII, §802, Nov. 3, 1995, 109 Stat. 396, provided that: “Notwithstanding any other provision of law—

“(1) no allocation may be made to any foreign nation or vessel under section 201 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) [16 U.S.C. 1821] in any fishery for which there is not a fishery management plan implemented in accordance with that Act [16 U.S.C. 1801 et seq.]; and

“(2) the Secretary of Commerce may not approve the portion of any permit application submitted under section 204(b) of the Act [16 U.S.C. 1824(b)] which proposes fishing by a foreign vessel for Atlantic mackerel or Atlantic herring unless—

“(A) the appropriate regional fishery management council recommends under section 204(b)(5) of that Act that the Secretary approve such fishing, and

“(B) the Secretary of Commerce includes in the permit any conditions or restrictions recommended by the appropriate regional fishery management council with respect to such fishing.”

USE OF VESSEL IDENTIFICATION EQUIPMENT

Pub. L. 100-629, §6, Nov. 7, 1988, 102 Stat. 3287, provided that:

“(a) The Secretary of State, the Secretary of Commerce, and the Secretary of the department in which the Coast Guard is operating, as appropriate, shall exercise their authority under section 201(c)(2)(C) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1821) to require the use of transponders or other such appropriate position-fixing and identification equipment on any vessel other than a vessel of the United States engaged in fishing in the United States Exclusive Economic Zone.

“(b) The Secretary of Commerce, after consultation with the Secretary of Defense, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating shall report to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committee on Commerce, Science and Transportation of the Senate within 180 days after the date of enactment of this Act [Nov. 7, 1988] on the results of their compliance with subsection (a).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1802, 1822, 1824, 1825, 1856, 1857, 1861 of this title.

§ 1822. International fishery agreements

(a) Negotiations

The Secretary of State—

(1) shall renegotiate treaties as provided for in subsection (b) of this section;

(2) shall negotiate governing international fishery agreements described in section 1821(c) of this title;

(3) may negotiate boundary agreements as provided for in subsection (d) of this section;

(4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements—

(A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and

(B) which provide for the conservation and management of anadromous species and highly migratory species; and

(5) may enter into such other negotiations, not prohibited by subsection (c) of this section, as may be necessary and appropriate to further the purposes, policy, and provisions of this chapter.

(b) Treaty renegotiation

The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after April 13, 1976, the renegotiation of any treaty which pertains to fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area, and which is in any manner inconsistent with the purposes, policy, or provisions of this chapter, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after April 13, 1976.

(c) International fishery agreements

No international fishery agreement (other than a treaty) which pertains to foreign fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977), or for anadromous species or Continental Shelf fishery resources beyond such zone or area—

(1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or

(2) may be entered into after May 31, 1976;

by the United States unless it is in accordance with the provisions of section 1821(c) of this title.

(d) Boundary negotiations

The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the exclusive economic zone of the United States in relation to any such nation.

(e) Highly migratory species agreements

(1) Evaluation

The Secretary of State, in cooperation with the Secretary, shall evaluate the effectiveness of each existing international fishery agree-

ment which pertains to fishing for highly migratory species. Such evaluation shall consider whether the agreement provides for—

(A) the collection and analysis of necessary information for effectively managing the fishery, including but not limited to information about the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the catch and bycatch levels in the fishery, and the present and probable future condition of any stock of fish involved;

(B) the establishment of measures applicable to the fishery which are necessary and appropriate for the conservation and management of the fishery resource involved;

(C) equitable arrangements which provide fishing vessels of the United States with (i) access to the highly migratory species that are the subject of the agreement and (ii) a portion of the allowable catch that reflects the traditional participation by such vessels in the fishery;

(D) effective enforcement of conservation and management measures and access arrangements throughout the area of jurisdiction; and

(E) sufficient and dependable funding to implement the provisions of the agreement, based on reasonable assessments of the benefits derived by participating nations.

(2) Access negotiations

The Secretary of State, in cooperation with the Secretary, shall initiate negotiations with respect to obtaining access for vessels of the United States fishing for tuna species within the exclusive economic zones of other nations on reasonable terms and conditions.

(3) Reports

The Secretary of State shall report to the Congress—

(A) within 12 months after November 28, 1990, on the results of the evaluation required under paragraph (1), together with recommendations for addressing any inadequacies identified; and

(B) within six months after November 28, 1990, on the results of the access negotiations required under paragraph (2).

(4) Negotiation

The Secretary of State, in consultation with the Secretary, shall undertake such negotiations with respect to international fishery agreements on highly migratory species as are necessary to correct inadequacies identified as a result of the evaluation conducted under paragraph (1).

(5) South Pacific tuna treaty

It is the sense of the Congress that the United States Government shall, at the earliest opportunity, begin negotiations for the purpose of extending the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed at Port Moresby, Papua New Guinea, April 2, 1987, and its¹ Annexes, Schedules, and implementing

¹ So in original.

agreements for an additional term of 10 years on terms and conditions at least as favorable to vessels of the United States and the United States Government.

(f) Nonrecognition

It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to an exclusive economic zone (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

(1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;

(2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or

(3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

(g) Fishery agreement with Russia

(1) The Secretary of State, in consultation with the Secretary, is authorized to negotiate and conclude a fishery agreement with Russia of a duration of no more than 3 years, pursuant to which—

(A) Russia will give United States fishing vessels the opportunity to conduct traditional fisheries within waters claimed by the United States prior to the conclusion of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, west of the maritime boundary, including the western special area described in Article 3(2) of the Agreement;

(B) the United States will give fishing vessels of Russia the opportunity to conduct traditional fisheries within waters claimed by the Union of Soviet Socialist Republics prior to the conclusion of the Agreement referred to in subparagraph (A), east of the maritime boundary, including the eastern special areas described in Article 3(1) of the Agreement;

(C) catch data shall be made available to the government of the country exercising fisheries jurisdiction over the waters in which the catch occurred; and

(D) each country shall have the right to place observers on board vessels of the other country and to board and inspect such vessels.

(2) Vessels operating under a fishery agreement negotiated and concluded pursuant to paragraph (1) shall be subject to regulations and permit requirements of the country in whose waters the fisheries are conducted only to the extent such regulations and permit requirements are specified in that agreement.

(3) The Secretary of Commerce may promulgate such regulations, in accordance with section 553 of title 5, as may be necessary to carry out the provisions of any fishery agreement negotiated and concluded pursuant to paragraph (1).

(Pub. L. 94-265, title II, §202, Apr. 13, 1976, 90 Stat. 339; Pub. L. 99-659, title I, §101(c)(2), Nov.

14, 1986, 100 Stat. 3707; Pub. L. 101-627, title I, §§105(a), 120(a), Nov. 28, 1990, 104 Stat. 4439, 4459; Pub. L. 102-251, title III, §301(e), Mar. 9, 1992, 106 Stat. 63.)

AMENDMENT OF SECTION

Pub. L. 102-251, title III, §§301(e)(1), (2), 308, Mar. 9, 1992, 106 Stat. 63, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, this section is amended:

(1) in subsection (b), (A) by inserting “or special areas” immediately after “February 28, 1977)” and (B) by striking “such zone or area” and inserting in lieu thereof “such zone or areas”; and

(2) in subsection (c), (A) by inserting “or special areas” immediately after “February 28, 1977)” and (B) by striking “such zone or area” and inserting in lieu thereof “such zone or areas”.

AMENDMENTS

1992—Subsec. (g). Pub. L. 102-251, §301(e)(3), added subsec. (g).

1990—Subsec. (e). Pub. L. 101-627, §105(a), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101-627, §120(a), substituted “an exclusive economic” for “a exclusive economic”.

Pub. L. 101-627, §105(a), redesignated former subsec. (e) as (f).

1986—Subsecs. (b) to (e). Pub. L. 99-659 substituted “exclusive economic zone” for “fishery conservation zone” wherever appearing.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 301(e)(3) of Pub. L. 102-251 effective Mar. 9, 1992, and amendment by section 301(e)(1), (2), of Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102-251, set out as a note under section 773 of this title.

CERTIFICATE OF LEGAL ORIGIN FOR ANADROMOUS FISH PRODUCTS

Section 801 of Pub. L. 101-627 provided that:

“(a) NEGOTIATIONS.—Within 60 days after the date of enactment of this Act [Nov. 28, 1990], the Secretary of State shall commence negotiations with nations which import or export anadromous fish or anadromous fish products for the purpose of securing general agreement among such nations to implement effective measures to prohibit international trade in anadromous fish or anadromous fish products unless such fish or fish products are accompanied by a valid certificate of legal origin attesting that the fish or fish product was lawfully harvested—

“(1) within the jurisdiction of a nation having naturally occurring or artificially established anadromous fish populations of the same species as the imported or exported product; or

“(2) on the high seas according to an international agreement among nations with jurisdiction over more than 1 percent of the stocks of anadromous fish being so harvested.

“(b) ISSUANCE OF CERTIFICATES.—For the purposes of subsection (a), a valid certificate of legal origin may be issued only by a nation which—

“(1) is the nation having jurisdiction over the vessel or other means by which the fish or fish product was harvested; and

“(2) maintains regular harvests of anadromous fish in a manner consistent with the criteria for lawful harvests set out in subsection (a).

“(c) BILATERAL OR MULTILATERAL AGREEMENTS.—Efforts undertaken by the Secretary of State pursuant to subsection (a) may, at the discretion of the Secretary, be directed toward achieving either bilateral or multilateral agreements, including trade agreements, whichever the Secretary determines to be most likely to result in the earliest possible date or dates of agreement by those nations which individually have in excess of \$1,000,000, or the equivalent, in import or export trade in anadromous fish and anadromous fish products.

“(d) REGULATIONS.—The Secretary of Commerce shall, within 180 days after the date of enactment of this Act [Nov. 28, 1990], promulgate regulations providing for—

“(1) the issuance of certificates of legal origin pursuant to agreements under subsection (a) for anadromous fish and anadromous fish products legally harvested by vessels of the United States;

“(2) the delegation of the authority to issue certificates of legal origin to States, territories, or possessions of the United States which the Secretary of Commerce determines to have implemented a program which is sufficient to accomplish the purposes of subsection (a); and

“(3) an orderly transition to such regulations, sufficient to ensure that United States commerce in anadromous fish and anadromous fish products is not unduly disrupted.

“(e) REPORT REQUIRED.—The Secretary of Commerce, after consultation with the Secretary of the Treasury, shall, within 180 days after the date of enactment of this Act [Nov. 28, 1990], submit to the Congress a report—

“(1) making recommendations as to the need for the adoption of United States import and export restrictions on anadromous fish and anadromous fish products consistent with subsection (a); and

“(2) identifying, evaluating, and making recommendations regarding any specific statutory or regulatory changes that may be necessary for the adoption of such restrictions.

“(f) CERTIFICATION.—If, at any time following the promulgation of the regulations required by subsection (d), the Secretary of Commerce finds that any nation is engaging in trade in unlawfully taken anadromous fish or anadromous fish products, the Secretary shall certify that fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a)(1) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)(1)).”

DRIFTNET IMPACT MONITORING, ASSESSMENT, AND CONTROL

Pub. L. 100-220, title IV, Dec. 29, 1987, 101 Stat. 1477, provided that:

“SEC. 4001. SHORT TITLE.

“This title may be cited as the ‘Driftnet Impact Monitoring, Assessment, and Control Act of 1987’.

“SEC. 4002. FINDINGS.

“The Congress finds that—

“(1) the use of long plastic driftnets is a fishing technique that may result in the entanglement and death of enormous numbers of target and nontarget marine resources in the waters of the North Pacific Ocean, including the Bering Sea;

“(2) there is a pressing need for detailed and reliable information on the number of marine resources that become entangled and die in actively fished driftnets and in driftnets that are lost, abandoned, or discarded; and

“(3) increased efforts are necessary to monitor, assess, and reduce the adverse impacts of driftnets.

“SEC. 4003. DEFINITIONS.

“As used in this title—

“(1) DRIFTNET.—The term ‘driftnet’ means a gillnet composed of a panel of plastic webbing one and one-half miles or more in length.

“(2) DRIFTNET FISHING.—The term ‘driftnet fishing’ means a fish-harvesting method in which a driftnet is placed in water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

“(3) EXCLUSIVE ECONOMIC ZONE OF THE UNITED STATES.—The term ‘exclusive economic zone of the United States’ means the zone defined in section 3(6) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(b)).

“(4) MARINE RESOURCES.—The term ‘marine resources’ includes fish, shellfish, marine mammals, seabirds, and other forms of marine life or waterfowl.

“(5) MARINE RESOURCES OF THE UNITED STATES.—The term ‘marine resources of the United States’ means—

“(A) marine resources found in, or which breed within, areas subject to the jurisdiction of the United States, including the exclusive economic zone of the United States; and

“(B) species of fish, wherever found, that spawn in the fresh or estuarine waters of the United States.

“(6) SECRETARY.—The term ‘Secretary’ means the Secretary of Commerce.

“SEC. 4004. MONITORING AGREEMENTS.

“(a) NEGOTIATIONS.—The Secretary, through the Secretary of State and in consultation with the Secretary of the Interior, shall immediately initiate, negotiations with each foreign government that conducts, or authorizes its nationals to conduct, driftnet fishing that results in the taking of marine resources of the United States in waters of the North Pacific Ocean outside of the exclusive economic zone and territorial sea of any nation, for the purpose of entering into agreements for statistically reliable cooperative monitoring and assessment of the numbers of marine resources of the United States killed and retrieved, discarded, or lost by the foreign government's driftnet fishing vessels. Such agreements shall provide for—

“(1) the use of a sufficient number of vessels from which scientists of the United States and the foreign governments may observe and gather statistically reliable information; and

“(2) appropriate methods for sharing equally the costs associated with such activities.

“(b) REPORT.—The Secretary, in consultation with the Secretary of State, shall provide to the Congress not later than 1 year after the date of enactment of this Act [Dec. 29, 1987] a full report on the results of negotiations under this section.

“SEC. 4005. IMPACT REPORT.

“(a) IN GENERAL.—The Secretary shall provide to the Congress within 1 year after the date of the enactment of this Act [Dec. 29, 1987], and at such other times thereafter as the Secretary considers appropriate, a report identifying the nature, extent, and effects of driftnet fishing in waters of the North Pacific Ocean on marine resources of the United States. The report shall include the best available information on—

“(1) the number and flag state of vessels involved;

“(2) the areas fished;

“(3) the length, width, and mesh size of driftnets used;

“(4) the number of marine resources of the United States killed by such fishing;

“(5) the effect of seabird mortality, as determined by the Secretary of the Interior, on seabird populations; and

“(6) any other information the Secretary considers appropriate.

“(b) INFORMATION FROM FOREIGN GOVERNMENTS.—The Secretary, through the Secretary of State, shall—

“(1) request relevant foreign governments to provide the information described in subsection (a), and

“(2) include in a report under this section the information so provided and an evaluation of the adequacy and reliability of such information.

“SEC. 4006. ENFORCEMENT AGREEMENTS.

“(a) **NEGOTIATIONS.**—The Secretary shall immediately initiate, through the Secretary of State and in consultation with the Secretary of the Department in which the Coast Guard is operating negotiations with each foreign government that conducts, or authorizes its nationals to conduct, driftnet fishing that results in the taking of marine resources of the United States in waters of the North Pacific Ocean outside of the exclusive economic zone and territorial sea of any nation, for the purpose of entering into agreements for effective enforcement of laws, regulations, and agreements applicable to the location, season, and other aspects of the operations of the foreign government's driftnet fishing vessels. Such agreements shall include measures for—

“(1) the effective monitoring and detection of violations;

“(2) the collection and presentation of such evidence of violations as may be necessary for the successful prosecution of such violations by the responsible authorities;

“(3) reporting to the United States of penalties imposed by the foreign governments for violations; and

“(4) appropriate methods for sharing equally the costs associated with such activities.

“(b) **CERTIFICATION FOR PURPOSES OF FISHERMEN'S PROTECTIVE ACT OF 1967.**—If the Secretary, in consultation with the Secretary of State, determines that a foreign government has failed, within 18 months after the date of the enactment of this Act [Dec. 29, 1987], to enter into and implement an agreement under subsection (a) or section 4004(a) that is adequate, the Secretary shall certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).

“SEC. 4007. EVALUATIONS AND RECOMMENDATIONS.

“(a) **MARKING, REGISTRY, AND IDENTIFICATION SYSTEM.**—The Secretary shall evaluate, in consultation with officials of other Federal agencies and such other persons as may be appropriate, the feasibility of and develop recommendations for the establishment of a driftnet marking, registry, and identification system to provide a reliable method for the determination of the origin by vessel, of lost, discarded, or abandoned driftnets and fragments of driftnets. In conducting such evaluation, the Secretary shall consider the adequacy of existing driftnet identification systems of foreign nations and the extent to which these systems achieve the objectives of this title.

“(b) **ALTERNATIVE DRIFTNET MATERIALS.**—The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of, and develop appropriate recommendations for, the use of alternative materials in driftnets for the purpose of increasing the rate of decomposition of driftnets that are discarded or lost at sea.

“(c) **DRIFTNET BOUNTY SYSTEM.**—The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of and develop appropriate recommendations for the implementation of a driftnet bounty system to pay persons who retrieve from the exclusive economic zone and deposit with the Secretary lost, abandoned, and discarded driftnet and other plastic fishing material.

“(d) **DRIFTNET FISHING VESSEL TRACKING SYSTEM.**—The Secretary, in consultation with such other persons as may be appropriate, shall evaluate the feasibility of, and develop appropriate recommendations for, the establishment of a cooperative driftnet fishing vessel tracking system to facilitate efforts to monitor the location of driftnet fishing vessels.

“(e) **REPORT.**—The Secretary shall transmit to the Congress not later than 18 months after the date of the enactment of this Act [Dec. 29, 1987] a report setting forth—

“(1) the evaluations and recommendations developed under subsections (a), (b), (c), and (d);

“(2) the most effective and appropriate means of implementing such recommendations;

“(3) any need for further research and development efforts and the estimated cost and time required for completion of such efforts; and

“(4) any need for legislation to provide authority to carry out such recommendations.

“SEC. 4008. CONSTRUCTION WITH OTHER LAWS.

“This title [this note] shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983 [16 U.S.C. 1453 note], and reflected in existing law on the date of the enactment of this Act [Dec. 29, 1987].

“SEC. 4009. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to the Department of Commerce and the Department of State, such sums as may be necessary to carry out the purposes of this title.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1821 of this title.

§ 1823. Congressional oversight of governing international fishery agreements

(a) In general

No governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

(b) Referral to committees

Any document described in subsection (a) of this section shall be immediately referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committees on Commerce, Science, and Transportation and on Foreign Relations.

(c) Computation of 60-day period

For purposes of subsection (a) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(d) Congressional procedures

(1) Rules of the House of Representatives and Senate

The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but

applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.

(2) "Fishery agreement resolution" defined

For purposes of this subsection, the term "fishery agreement resolution" refers to a joint resolution of either House of Congress—

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a) of this section; and

(B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce, Science, and Transportation or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) of this section relating to that agreement is transmitted to the Congress.

(3) Placement on calendar

Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

(4) Floor consideration in the House

(A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.

(C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any fishery agreement resolution shall be decided without debate.

(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applica-

ble to other bills and resolutions in similar circumstances.

(5) Floor consideration in the Senate

(A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from time under their control with respect to the applicable fishery agreement resolution.

(D) A motion in the Senate to further limit debate is not debatable. A motion to recommit any fishery agreement resolution is not in order.

(Pub. L. 94-265, title II, §203, Apr. 13, 1976, 90 Stat. 340; Pub. L. 103-437, §6(x), Nov. 2, 1994, 108 Stat. 4587.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103-437, §6(x)(1), substituted "Commerce, Science, and Transportation and on" for "Commerce and".

Subsec. (d)(2)(B). Pub. L. 103-437, §6(x)(2), substituted "Commerce, Science, and Transportation" for "Commerce".

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104-43, title V, §501, Nov. 3, 1995, 109 Stat. 391, provided that: "This title [amending provisions set out below] may be cited as the 'Sea of Okhotsk Fisheries Enforcement Act of 1995'."

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH REPUBLIC OF ESTONIA

Pub. L. 102-587, title I, §1001, Nov. 4, 1992, 106 Stat. 5039, provided that: "Notwithstanding section 203 of the

Magnuson Fishery Conservation and Management Act (16 U.S.C. 1823), the governing international fishery agreement between the Government of the United States of America and the Government of the Republic of Estonia, as contained in the message to Congress from the President of the United States dated June 24, 1992, is approved by the Congress as a governing international fishery agreement for the purposes of such Act [16 U.S.C. 1801 et seq.] and shall enter into force and effect with respect to the United States on the date of enactment of this title [Nov. 4, 1992].”

FISHERIES ENFORCEMENT IN CENTRAL BERING SEA AND CENTRAL SEA OF OKHOTSK

Pub. L. 102-582, title III, Nov. 2, 1992, 106 Stat. 4906, as amended by Pub. L. 104-43, title V, § 502, Nov. 3, 1995, 109 Stat. 391, provided that:

“SEC. 301. SHORT TITLE.

“This title may be cited as the ‘Central Bering Sea Fisheries Enforcement Act of 1992’.

“SEC. 302. PROHIBITION APPLICABLE TO UNITED STATES VESSELS AND NATIONALS.

“(a) PROHIBITION.—Vessels and nationals of the United States are prohibited from conducting fishing operations in the Central Bering Sea and the Central Sea of Okhotsk, except where such fishing operations are conducted in accordance with an international fishery agreement to which the United States and the Russian Federation are parties.

“(b) CIVIL PENALTIES AND PERMIT SANCTIONS.—A violation of this section shall be subject to civil penalties and permit sanctions under section 308 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1858).

“SEC. 303. PORT PRIVILEGES DENIAL FOR FISHING IN CENTRAL BERING SEA.

“(a) DENIAL OF PORT PRIVILEGES.—The Secretary of the Treasury shall, after December 31, 1992, in accordance with recognized principles of international law—

“(1) withhold or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91) for any fishing vessel documented under the laws of a nation that is included on a list published under subsection (b); and

“(2) deny entry of such fishing vessel to any place in the United States and to the navigable waters of the United States.

“(b) PUBLICATION OF LIST.—Not later than forty-five days after the date of enactment of this Act [Nov. 2, 1992], the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall publish in the Federal Register a list of nations whose nationals or vessels conduct fishing operations in the Central Bering Sea, except where such fishing operations are in accordance with an international fishery agreement to which the United States and the Russian Federation are parties. The Secretary shall publish as an addendum to the list the name of each vessel documented under the laws of each listed nation which conducts fishing operations in the Central Bering Sea. A revised list shall be published whenever the list is no longer accurate, except that a nation may not be removed from the list unless—

“(1) the nationals and vessels of that nation have not conducted fishing operations in the Central Bering Sea for the previous ninety days and the nation has committed, through a bilateral agreement with the United States or in any other manner acceptable to the Secretary of Commerce, not to permit its nationals or vessels to resume such fishing operations; or

“(2) the nationals and vessels of that nation are conducting fishing operations in the Central Bering Sea that are in accordance with an international fishery agreement to which the United States and the Russian Federation are parties.

“(c) NOTIFICATION OF NATION.—Before the publication of a list of nations under subsection (b), the Secretary

of State shall notify each nation included on that list and explain the requirement to deny the port privileges of fishing vessels of that nation under subsection (a) as a result of such publication.

“SEC. 304. DURATION OF PORT PRIVILEGES DENIAL.

“Any denial of port privileges under section 303 with respect to any fishing vessel of a nation shall remain in effect until such nation is no longer listed under section 303(b).

“SEC. 305. RESTRICTION ON FISHING IN UNITED STATES EXCLUSIVE ECONOMIC ZONE.

“(a) REGULATIONS.—Within one hundred and eighty days after the date of enactment of this Act [Nov. 2, 1992], after notice and public comment, the Secretary of Commerce shall issue regulations, under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) and any other applicable law, to prohibit—

“(1) any permitted fishing vessel from catching, taking, or harvesting fish in a fishery under the geographical authority of the North Pacific Fishery Management Council if such vessel is owned or controlled by any person that also owns or controls a fishing vessel that is listed on the addendum under section 303(b);

“(2) any processing facility from receiving any fish caught, taken, or harvested in a fishery under the geographical authority of the North Pacific Fishery Management Council if such facility is owned or controlled by any person that also owns or controls a fishing vessel that is listed on the addendum under section 303(b); and

“(3) any permitted fishing vessel from delivering fish caught, taken, or harvested in a fishery under the geographic authority of the North Pacific Fishery Management Council to a processing facility that is owned or controlled by any person that also owns or controls a fishing vessel that is listed on the addendum under section 303(b).

“(b) REQUIREMENT FOR SUBMISSION OF DOCUMENTS.—The Secretary of Commerce shall require under any regulations issued under subsection (a) the submission of any affidavits, financial statements, corporate agreements, and other documents that the Secretary of Commerce determines, after notice and public comment, are necessary to ensure that all vessels and processing facilities are in compliance with this section.

“(c) APPEALS; DURATION OF PROHIBITIONS.—The regulations issued under subsection (a) shall—

“(1) establish procedures for a person to appeal a decision to impose a prohibition under subsection (a) on a vessel or processing facility owned or controlled by that person; and

“(2) specify procedures for the removal of any prohibition imposed on a vessel or processing facility under subsection (a)—

“(A) upon publication of a revised list under section 303(b), and a revised addendum which does not include a fishing vessel owned or controlled by the person who also owns or controls the vessel or facility to which the prohibition applies; or

“(B) on the date that is ninety days after such person terminates ownership and control in fishing vessels that are listed on the addendum under section 303(b).

“SEC. 306. DEFINITIONS.

“In this title, the following definitions apply:

“(1) CENTRAL BERING SEA.—The term ‘Central Bering Sea’ means the central Bering Sea area which is more than two hundred nautical miles seaward of the baselines from which the breadth of the territorial seas of the United States and the Russian Federation are measured.

“(2) CENTRAL SEA OF OKHOTSK.—The term ‘Central Sea of Okhotsk’ means the Central Sea of Okhotsk area which is more than two hundred nautical miles seaward of the baseline from which the breadth of the territorial sea of the Russian Federation is measured.

“(3) FISHING VESSEL.—The term ‘fishing vessel’ means any vessel which is used for—

“(A) catching, taking, or harvesting fish; or

“(B) aiding or assisting one or more vessels at sea in the performance of fishing operations, including preparation, supply, storage, refrigeration, transportation, or processing.

“(4) OWNS OR CONTROLS.—When used in reference to a vessel or processing facility—

“(A) the term ‘owns’ means holding legal title to the vessel or processing facility; and

“(B) the term ‘controls’ includes an absolute right to direct the business of the person owning the vessel or processing facility, to limit the actions of or replace the chief executive officer (by whatever title), a majority of the board of directors, or any general partner (as applicable) of such person, to direct the transfer or operations of the vessel or processing facility, or otherwise to exercise authority over the business of such person, but the term does not include the right simply to participate in those activities of such person or the right to receive a financial return, such as interest or the equivalent of interest, on a loan or other financing obligation.

“(5) PERMITTED FISHING VESSEL.—The term ‘permitted fishing vessel’ means any fishing vessel that is subject to a permit issued by the Secretary of Commerce under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

“(6) PERSON.—The term ‘person’ means any individual (whether or not a citizen of the United States), any corporation, partnership, association, cooperative, or other entity (whether or not organized under the laws of any State), and any State, local, or foreign government, or any entity of such government or the Federal Government.

“(7) PROCESSING FACILITY.—The term ‘processing facility’ means any fish processing establishment or fish processing vessel that receives unprocessed fish.

“SEC. 307. TERMINATION.

“This title shall cease to have force and effect after the date that is seven years after the date of enactment of this Act [Nov. 2, 1992], except that any proceeding with respect to violations of section 302 occurring prior to such termination date shall be conducted as if that section were still in effect.”

NORTH PACIFIC AND BERING SEA FISHERIES ADVISORY BODY

Pub. L. 100-629, §5, Nov. 7, 1988, 102 Stat. 3287, provided that:

“(a) IN GENERAL.—The Secretary of State shall establish an advisory body on the fisheries of the North Pacific and the Bering Sea, which shall advise the United States representative to the International Consultative Committee created in accordance with Article XIV of the governing international fishery agreement entered into between the United States and the Union of Soviet Socialist Republics, as contained in the message to Congress from the President of the United States dated June 22, 1988.

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The advisory body established pursuant to this section shall consist of 12 members, as follows:

“(A) The Director of the Department of Fisheries of the State of Washington.

“(B) The Commission of the Department of Fish and Game of the State of Alaska.

“(C) Five members appointed by the Secretary of State from among persons nominated by the Governor of Alaska on the basis of their knowledge and experience in commercial harvesting, processing, or marketing of fishery resources.

“(D) Five members appointed by the Secretary of State from among persons nominated by the Governor of Washington on the basis of their knowledge and experience in commercial harvesting, processing, or marketing of fishery resources.

“(2) NOMINATIONS.—The Governor of Alaska and the Governor of Washington shall each nominate 10 persons for purposes of paragraph (1).

“(c) PAY.—Members of the advisory body established pursuant to this section shall receive no pay by reason of their service as members of the advisory body.

“(d) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to an advisory body established pursuant to this section.”

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH RUSSIAN FEDERATION

Pub. L. 103-206, title VII, §701, Dec. 20, 1993, 107 Stat. 2446, provided that: “The Agreement between the Government of the United States of America and the Government of the Russian Federation on Mutual Fisheries Relations which was entered into on May 31, 1988, and which expired by its terms on October 28, 1993, may be brought into force again for the United States through an exchange of notes between the United States of America and the Russian Federation and may remain in force and effect on the part of the United States until May 1, 1994, and may be amended or extended by a subsequent agreement to which section 203 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1823) applies.”

Pub. L. 100-629, §1, Nov. 7, 1988, 102 Stat. 3286, provided: “That notwithstanding any provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the governing international fishery agreement entered into between the Government of the United States and the Government of the Union of Soviet Socialist Republics, as contained in the message to Congress from the President of the United States dated June 22, 1988, is approved by the Congress and shall enter into force and effect with respect to the United States on the date of the enactment of this Act [Nov. 7, 1988].”

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH GERMAN DEMOCRATIC REPUBLIC

Pub. L. 100-350, §1, June 27, 1988, 102 Stat. 660, provided: “That notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1823), the extension of the governing international fishery agreement between the Government of the United States of America and the Government of the German Democratic Republic, as contained in the message to Congress from the President of the United States, dated May 3, 1988—

“(1) is approved by Congress as a governing international fishery agreement for the purposes of such Act [16 U.S.C. 1801 et seq.]; and

“(2) shall enter into force and effect with respect to the United States on the date of enactment of this Act [June 27, 1988].”

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH JAPAN

Pub. L. 101-224, §7, Dec. 12, 1989, 103 Stat. 1907, provided that: “Notwithstanding any provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the governing international fishery agreement entered into between the Government of the United States and the Government of Japan, as contained in the message to the Congress from the President of the United States dated October 30, 1989, is approved by the Congress and shall enter into force and effect with respect to the United States on the date of enactment of this Act [Dec. 12, 1989].”

Pub. L. 100-220, title I, §1001, Dec. 29, 1987, 101 Stat. 1459, provided that: “Notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1823), the governing international fishery agreement between the Government of the United States of America and the Government of Japan Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the

President of the United States, dated November 17, 1987—

“(1) is approved by Congress as a governing international fishery agreement for the purposes of such Act [16 U.S.C. 1801 et seq.]; and

“(2) shall enter into force and effect with respect to the United States on the date of the enactment of this Act [Dec. 29, 1987].”

GOVERNING INTERNATIONAL FISHERY AGREEMENTS WITH ICELAND AND THE EUROPEAN ECONOMIC COMMUNITY

Pub. L. 98-623, title I, Nov. 8, 1984, 98 Stat. 3394, provided that: “Notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1823) [this section]—

“(1) the governing international fishery agreement between the Government of the United States and the European Economic Community Concerning Fisheries Off the Coasts of the United States, as contained in the Message to Congress from the President of the United States dated August 27, 1984, is hereby approved by Congress as a governing international fishery agreement for purposes of that Act [this chapter], and may enter into force with respect to the United States in accordance with the terms of Article XIX of the agreement after the date of the enactment of this title [Nov. 8, 1984], upon signature of the agreement by both parties; and

“(2) the governing international fishery agreement between the Government of the United States and the Government of the Republic of Iceland Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated September 29, 1984, is hereby approved by Congress as a governing international fishery agreement for purposes of that Act [this chapter], and may enter into force with respect to the United States in accordance with the terms of Article XVI of the agreement after the date of the enactment of this title [Nov. 8, 1984].”

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH FAROE ISLANDS AND DENMARK

Pub. L. 98-498, title IV, § 440, Oct. 19, 1984, 98 Stat. 2310, provided that: “Notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act of 1976 [this section], the Governing International Fishery Agreement between the Government of the United States of America of the One Part and the Home Government of the Faroe Islands and the Government of Denmark of the Other Part Concerning Faroese Fishing in Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated July 13, 1984—

“(1) is approved by Congress as a governing international fishery agreement for purposes of that Act [this chapter]; and

“(2) may enter into force with respect to the United States in accordance with the terms of Article XVI of the Agreement following the enactment of this title [Oct. 19, 1984].”

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH JAPAN

Pub. L. 97-389, title IV, § 401, Dec. 29, 1982, 96 Stat. 1954, provided that: “Notwithstanding any other provision of law, the governing international fishery agreement entered into between the Government of the United States and the Government of Japan pursuant to the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.) signed at Washington on September 10, 1982, is approved, and shall become effective on January 1, 1983.”

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH SPAIN

Pub. L. 97-389, title IV, § 402, Dec. 29, 1982, 96 Stat. 1954, provided that: “Notwithstanding any other provision of law, the governing international fishery agree-

ment entered into between the Government of the United States and the Government of Spain pursuant to the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.) signed on July 29, 1982, is approved.”

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH PORTUGAL

Pub. L. 96-561, title I, § 145, title II, § 238(b), Dec. 22, 1980, 94 Stat. 3287, 3300, provided that: “Notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act [this section], the governing international fishery agreement between the Government of the United States of America and the Government of Portugal Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated December 1, 1980—

“(1) is hereby approved by Congress as a governing international fishery agreement for the purposes of such Act [this chapter]; and

“(2) shall enter into force and effect with respect to the United States on the date of the enactment of this title [Dec. 22, 1980].”

EXTENSION OF INTERNATIONAL FISHERY AGREEMENTS

Pub. L. 100-66, § 1, July 10, 1987, 101 Stat. 384, provided that: “Notwithstanding any provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the governing international fishery agreement entered into between the Government of the United States and the Government of the Republic of Korea on July 26, 1982, shall remain in force and effect with respect to the United States until the closing date of the sixty-day period referred to in section 203(a) of such Act [16 U.S.C. 1823(a)] that applies with respect to any new governing international fishery agreement between the United States and the Republic of Korea that is transmitted to the Congress under section 203(a) after May 1, 1987, or November 1, 1987, whichever is earlier.”

Pub. L. 98-364, title I, § 106, July 17, 1984, 98 Stat. 442, provided that: “Notwithstanding any provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and upon certification by the Secretary of State to the President of the Senate and the Speaker of the House of Representatives that a new governing international fishery agreement in conformity with such Act has been negotiated by the United States and the European Economic Community, the existing governing international fishery agreement referred to in section 2(a)(7) of the Fishery Conservation Zone Transition Act (16 U.S.C. 1823, note) [Pub. L. 95-6] may be extended or reinstated, as the case may be, and may be in force and effect with respect to the United States, for the period of time ending on the earlier of (1) the effective date of the new governing international fishery agreement, or (2) September 30, 1984.”

Pub. L. 97-212, § 10(b), June 30, 1982, 96 Stat. 148, provided that: “Notwithstanding any provision of the Act entitled ‘An Act for the conservation and management of the fisheries, and for other purposes’, dated April 13, 1976 (16 U.S.C. 1801 et seq.), the governing international fishery agreements referred to in section 2(a)(9) and (10) of the Fishery Conservation Zone Transition Act [Pub. L. 95-6, set out as a note below] shall be extended, and shall be in force and effect with respect to the United States, for the period of time ending on—

“(1) the deadline for completion of Congressional review, pursuant to section 203(a) of such 1976 Act [subsec. (a) of this section], of any new governing international fishery agreement signed, on or before July 31, 1982, by the United States and the respective foreign government that is a party to the agreement in question; or

“(2) July 31, 1982, if the United States and the respective foreign government that is a party to the agreement in question fail to sign a new governing international fishery agreement on or before that date.”

CONGRESSIONAL APPROVAL OF CERTAIN GOVERNING
INTERNATIONAL FISHERY AGREEMENTS

Pub. L. 95-6, §2, Feb. 21, 1977, 91 Stat. 15, as amended by Pub. L. 95-8, §1, Mar. 3, 1977, 91 Stat. 18; Pub. L. 95-219, §1, Dec. 28, 1977, 91 Stat. 1613; Pub. L. 96-561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300; Pub. L. 97-212, §10(a), June 30, 1982, 96 Stat. 148; Pub. L. 98-44, title I, §105, July 12, 1983, 97 Stat. 217; Pub. L. 98-364, title I, §105, July 17, 1984, 98 Stat. 442, provided that:

“(a) Notwithstanding section 203 of the Magnuson Fishery Conservation and Management Act [this section], the governing international fishery agreement between the Government of the United States of America and—

“(1) the Government of the People’s Republic of Bulgaria Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 14, 1974;

“(2) the Government of the Socialist Republic of Romania Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

“(3) the Government of the Republic of China Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

“(4) the Government of the German Democratic Republic Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

“(5) the Government of the Union of Soviet Socialist Republics Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated January 10, 1977;

“(6) the Government of the Polish People’s Republic Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated September 16, 1976;

“(7) the European Economic Community Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated February 21, 1977;

“(8) the Government of Japan Concerning Fisheries Off the Coasts of the United States (for 1977), as contained in the message to Congress from the President of the United States dated February 21, 1977;

“(9) the Government of the Republic of Korea Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated February 21, 1977;

“(10) the Government of Spain Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated February 21, 1977; and

“(11) the Government of Mexico Concerning Fisheries Off the Coasts of the United States, as contained in the message to Congress from the President of the United States dated October 7, 1977;

is hereby approved by the Congress as a governing international fishery agreement for purposes of the Magnuson Fishery Conservation and Management Act [section 1801 et seq. of this title]. Each such agreement referred to in paragraphs (1) through (6) shall enter into force and effect with respect to the United States on the date of the enactment of this joint resolution [Feb. 21, 1977], and each such agreement referred to in paragraphs (7) through (11) shall enter into force and effect with respect to the United States on February 27, 1977.

“(b) Notwithstanding such section 203 [this section]—

“(1) the governing international fishery agreement referred to in subsection (a)(5), as extended until July 1, 1983 pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of

the United States dated May 11, 1982, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976 [this chapter];

“(2) the governing international fishery agreement between the American Institute in Taiwan and the Coordination Council for North American Affairs, as contained in the message to the House of Representatives and the Senate from the Secretary of State dated June 15, 1982, is hereby approved by the Congress as a governing international fishery agreement for the purposes of the Act of 1976 [this chapter]; and

“(3) the governing international fishery agreement referred to in subsection (a)(6), as extended until July 1, 1983 pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated June 21, 1982, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976 [this chapter].

Each such governing international fishery agreement shall enter into force and effect with respect to the United States on July 1, 1982.

“(c) Notwithstanding such section 203 [this section]—

“(1) the governing international fishery agreement referred to in subsection (a)(5), as extended until December 31, 1985, pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated May 8, 1984, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976 [this chapter];

“(2) the governing international fishery agreement referred to in subsection (a)(6), as extended until December 31, 1985, pursuant to the Diplomatic Notes referred to in the message to the Congress from the President of the United States dated May 7, 1984, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976 [this chapter]; and

“(3) the governing international fishery agreement referred to in subsection (a)(4), as contained in the message to the House of Representatives and the Senate from the President of the United States dated May 3, 1983, is hereby approved by the Congress as a governing international fishery agreement for the purposes of such Act of 1976 [this chapter].

The governing international fishery agreements referred to in paragraphs (1) and (2) shall enter into force and effect with respect to the United States on July 1, 1984; and the governing international fishery agreement referred to in paragraph (3) shall enter into force and effect with respect to the United States on July 1, 1983.”

Pub. L. 95-219, §2, Dec. 28, 1977, 91 Stat. 1613, provided that: “The amendments made by the first section of this Act [adding par. (11) and amending provisions following par. (11)] shall take effect February 27, 1977.”

Pub. L. 95-8, §2, Mar. 3, 1977, 91 Stat. 18, provided that: “The amendments made by the first section of this Act [adding pars. (7) to (10) and amending provisions following par. (10)] shall take effect February 27, 1977.”

RECIPROCAL FISHERIES AGREEMENT BETWEEN UNITED
STATES AND CANADA

Pub. L. 95-6, §5, as added Pub. L. 95-73, July 27, 1977, 91 Stat. 283; amended Pub. L. 95-314, July 1, 1978, 92 Stat. 376; Pub. L. 96-561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300, provided that:

“(a) CONGRESSIONAL APPROVAL.—The Congress hereby approves the Reciprocal Fisheries Agreement for 1978 between the Government of the United States and the Government of Canada (hereinafter in this section referred to as the ‘Agreement’) as contained in the message to Congress from the President of the United States dated May 1, 1978. The Agreement shall be in force and effect with respect to the United States from January 1, 1978, until such later date in 1978 as may be determined pursuant to the terms of the Agreement.

“(b) APPLICATION.—During the period when the Agreement is in force and effect with respect to the United States—

“(1) vessels and nationals of Canada may fish within the fishery conservation zone, or for anadromous species and Continental Shelf fishery resources beyond such zone, but only pursuant to, and in accordance with, the provisions of the Agreement; and

“(2) title II of the Magnuson Fishery Conservation and Management Act [this subchapter] (relating to foreign fishing and international fishery agreements) and section 307 of such Act [section 1857 of this title] (relating to prohibited acts) shall not apply with respect to fishing within the fishery conservation zone, or for anadromous species and Continental Shelf fishery resources beyond such zone, by vessels and nationals of Canada which is pursuant to, and in accordance with the provisions of the Agreement.

“(c) FISHING STATISTICS.—(1) Any person who—

“(A) owns or operates any fishing vessel which—

“(i) is a vessel of the United States, and

“(ii) engages in fishing to which the Agreement applies; or

“(B) directly or indirectly receives, or may receive, fish to which the Agreement applies in the course of a commercial activity in quantities determined by the Secretary to be sufficient to assist in the carrying out of this paragraph,

shall submit to the Secretary such statistics (including, but not limited to, catch data) regarding such fishing or such receipt of fish as are necessary to fulfill the obligations of the United States under article XIII of the Agreement. The Secretary, after consultation with the Secretary of State, shall issue such regulations as are necessary and appropriate to carry out the purposes of this paragraph. Section 303(d) of the Magnuson Fishery Conservation and Management Act [section 1853(d) of this title] (relating to the confidentiality of statistics) shall apply with respect to all statistics submitted under this paragraph.

“(2) Any violation of paragraph (1), or of any regulation issued pursuant to paragraph (1), by any person shall be deemed to be an act prohibited by section 307 of the Magnuson Fishery Conservation and Management Act [section 1857 of this title]. Any person who commits any such violation shall be liable to the United States for a civil penalty as provided for in section 308 of such Act [section 1858 of this title]. Sections 309 [section 1859 of this title] (relating to criminal offenses) and 310 [section 1860 of this title] (relating to civil forfeiture) of such Act shall not apply with respect to any such violation.

“(d) DEFINITIONS.—As used in this section, the terms ‘anadromous species’, ‘Continental Shelf fishery resources’, ‘fishery conservation zone’, ‘fishing’, ‘fishing vessel’, ‘Secretary’, and ‘vessel of the United States’ shall have the same respective meanings as are given to such terms in section 3 of the Magnuson Fishery Conservation and Management Act [section 1802 of this title].”

Amendment by Pub. L. 96-561, title II, §238(b), Dec. 22 1980, 94 Stat. 3300, effective 15 days after Dec. 22, 1980, see section 238 of Pub. L. 96-561, set out as a Short Title note under section 1801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1821, 1857 of this title.

§ 1824. Permits for foreign fishing

(a) In general

After February 28, 1977, no foreign fishing vessel shall engage in fishing within the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section for such vessel.

(b) Applications and permits under governing international fishery agreements

(1) Eligibility; duration

Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a) of this section. No permit issued under this section may be valid for longer than a year; and section 558(c) of title 5 does not apply to the renewal of any such permit.

(2) Forms

The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.

(3) Contents

Any application made under this subsection shall specify—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, hold capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;

(C) each fishery in which each such vessel wishes to fish;

(D) the estimated amount of tonnage of fish which will be caught, taken, or harvested in each such fishery by each such vessel during the time the permit is in force;

(E) the amount or tonnage of United States harvested fish, if any, which each such vessel proposes to receive at sea from vessels of the United States;

(F) the ocean area in which, and the season or period during which, such fishing will be conducted; and

(G) all applicable vessel safety standards imposed by the foreign country, and shall include written certification that the vessel is in compliance with those standards;

and shall include any other pertinent information and material which the Secretary may require.

(4) Transmittal for action

Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish a notice of receipt of the application in the Federal Register. Any such notice shall summarize the contents of the applications from each nation included therein with respect to the matters described in paragraph (3). The Secretary of State shall promptly transmit—

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B) a copy of the application to the Secretary of the department in which the Coast Guard is operating; and

(C) a copy or a summary of the application to the appropriate Council.

(5) Action by Council

After receiving a copy or summary of an application under paragraph (4)(C), the Council may prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

(6) Approval

(A) After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve, subject to subparagraph (B), the application, if he determines that the fishing described in the application will meet the requirements of this chapter, or he may disapprove all or any portion of the application.

(B)(i) In the case of any application which specifies that one or more foreign fishing vessels propose to receive at sea United States harvested fish from vessels of the United States, the Secretary may approve the application unless the Secretary determines, on the basis of the views, recommendations, and comments referred to in subparagraph (A) and other pertinent information, that United States fish processors have adequate capacity, and will utilize such capacity, to process all United States harvested fish from the fishery concerned.

(ii) The amount or tonnage of United States harvested fish which may be received at sea during any year by foreign fishing vessels under permits approved under this paragraph may not exceed that portion of the optimum yield of the fishery concerned which will not be utilized by United States fish processors.

(iii) In deciding whether to approve any application under this subparagraph, the Secretary may take into account, with respect to the foreign nation concerned, such other matters as the Secretary deems appropriate.

(7) Establishment of conditions and restrictions

The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and the regulations promulgated to implement any such plan.

(B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.

(C) The requirements described in section 1821(c)(1), (2), and (3) of this title.

(D) If the permit is issued other than pursuant to an application approved under paragraph (6)(B), the restriction that the foreign fishing vessel may not receive at sea United States harvested fish from vessels of the United States.

(E) If the permit is issued pursuant to an application approved under paragraph (6)(B), the maximum amount or tonnage of United States harvested fish which may be received at sea from vessels of the United States.

(F) Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

(8) Notice of approval

The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating; and

(C) any Council which has authority over any fishery specified in such application.

(9) Disapproval of applications

If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

(10) Fees

(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The Secretary, in consultation with the Secretary of State, shall establish a schedule of reasonable fees that shall apply nondiscriminatorily to each foreign nation.

(B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury.

(11) Issuance of permits

If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such

foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

(c) Registration permits

The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 1821(b) of this title and which wishes to engage in fishing described in subsection (a) of this section. Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

(Pub. L. 94-265, title II, § 204, Apr. 13, 1976, 90 Stat. 342; Pub. L. 95-354, § 4(5)-(8), Aug. 28, 1978, 92 Stat. 520, 521; Pub. L. 96-470, title I, § 111(b), title II, § 208, Oct. 19, 1980, 94 Stat. 2239, 2245; Pub. L. 96-561, title II, § 232, Dec. 22, 1980, 94 Stat. 3298; Pub. L. 97-453, § 3, Jan. 12, 1983, 96 Stat. 2483; Pub. L. 99-272, title VI, § 6021, Apr. 7, 1986, 100 Stat. 123; Pub. L. 99-659, title I, §§ 101(c)(2), 102, 103(b), Nov. 14, 1986, 100 Stat. 3707, 3709; Pub. L. 101-627, title I, §§ 106, 120(b), Nov. 28, 1990, 104 Stat. 4440, 4459; Pub. L. 102-251, title III, § 301(f), Mar. 9, 1992, 106 Stat. 64.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 102-251, title III, §§ 301(f), 308, Mar. 9, 1992, 106 Stat. 64, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, subsection (a) is amended by inserting "within the special areas," before "or for anadromous species" and "or areas" after "such zone".

AMENDMENTS

1990—Subsec. (b)(4)(C). Pub. L. 101-627, § 120(b), substituted "Council" for "council".

Subsec. (b)(10). Pub. L. 101-627, § 106(a), amended par. (10) generally. Prior to amendment, par. (10) consisted

of subpars. (A) to (F) relating to schedule of fees to be paid for permits for foreign fishing vessels, ratios for determining minimum fees, review and notice to Congress of performance by nations receiving allocations, factors included and excluded in cost of carrying out this chapter, use of amounts collected in fees, and deposit into general fund of United States Treasury of a determined amount.

Subsec. (b)(12). Pub. L. 101-627, § 106(b), struck out par. (12) which related to sanctions for violation of section 1857 of this title or for failure to pay civil penalty under section 1858 of this title or criminal fine under section 1859 of this title. See section 1858(g) of this title.

1986—Subsec. (a). Pub. L. 99-659, § 101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone".

Subsec. (b)(1). Pub. L. 99-659, § 102(1), inserted provision that no permit issued under this section may be valid for longer than a year, with section 558(c) of title 5 inapplicable to the renewal of any such permit.

Subsec. (b)(3)(G). Pub. L. 99-659, § 103(b), added subpar. (G).

Subsec. (b)(4)(C). Pub. L. 99-659, § 102(2), struck out "upon its request" before period at end.

Subsec. (b)(6)(A). Pub. L. 99-659, § 102(3), inserted "or he may disapprove all or any portion of the application".

Subsec. (b)(10). Pub. L. 99-272 amended par. (10) generally. Prior to amendment, par. (10) read as follows: "Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish a schedule of such fees which shall apply nondiscriminatorily to each foreign nation. The fees imposed under this paragraph shall be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this chapter (including, but not limited to, fishery conservation and management, fisheries research, administration, and enforcement, but excluding costs for observers covered by surcharges under section 1821(i)(4) of this title) during each fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year. The amount collected by the Secretary under this paragraph shall be transferred to the fisheries loan fund established under section 742c of this title for so long as such fund exists and used of the purpose of making loans therefrom, but only to the extent and in amounts provided for in advance in appropriation Acts."

Subsec. (b)(10)(B), (C). Pub. L. 99-659, § 101(c)(2), substituted "exclusive economic zone" for "fishery conservation zone".

Subsec. (b)(12). Pub. L. 99-659, § 102(4), amended par. (12) generally. Prior to amendment, par. (12) read as follows: "If any foreign fishing vessel for which a permit has been issued pursuant to this subsection has been used in the commission of any act prohibited by section 1857 of this title the Secretary may, or if any civil penalty imposed under section 1858 of this title or any criminal fine imposed under section 1859 of this title has not been paid and is overdue the Secretary shall—

"(A) revoke such permit, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;

"(B) suspend such permit for the period of time deemed appropriate; or

"(C) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under such application.

Any permit which is suspended under this paragraph for nonpayment of a civil penalty shall be reinstated by

the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing rate.”

1983—Subsec. (b)(3)(B). Pub. L. 97-453, §3(1), inserted “hold” before “capacity”.

Subsec. (b)(4). Pub. L. 97-453, §3(2), struck out “and shall be set forth under the name of each Council to which it will be transmitted for comment” after “in paragraph (3)”.

Subsec. (b)(4)(B). Pub. L. 97-453, §3(3), struck out “to each appropriate Council and” after “application”.

Subsec. (b)(4)(C). Pub. L. 97-453, §3(3), substituted “a copy or a summary of the application to the appropriate council, upon its request” for “a monthly summary of foreign fishing applications including a report on approved applications as described in paragraphs (6) and (7) to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate”.

Subsec. (b)(5). Pub. L. 97-453, §3(4), substituted “After receiving a copy or summary of an application under paragraph (4)(C), the Council may” for “After receipt of an application transmitted under paragraph (4)(B), each appropriate Council shall”.

1980—Subsec. (b)(4)(C). Pub. L. 96-470, §208, substituted “a monthly summary of foreign fishing applications including a report on approval applications as described in paragraph (6) and (7)” for “a copy of such material”.

Subsec. (b)(8)(D). Pub. L. 96-470, §111(b), struck out subpar. (D) which required the Secretary to promptly transmit a copy of each application to the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committees on Commerce and Foreign Relations of the Senate.

Subsec. (b)(10). Pub. L. 96-561, §232(b), substituted provision directing that fees imposed under this paragraph be at least in an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this chapter, including, but not limited to, fishery conservation and management, fisheries research, administration, and enforcement, but excluding costs for observers covered by surcharges under section 1821(i)(4) of this title, during each fiscal year, the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic fishing vessels within such zone and the territorial waters of the United States during such preceding year and that the fees collected for permits issued after 1981 be transferred to the fisheries loan fund for provision directing that fees be formulated so as to ensure that receipts resulting from payments for fees issued for 1981 are not less than an amount equal to 7 percent of the ex vessel value of the total harvest by foreign fishing vessels in the fishery conservation zone during 1979 and that the fees collected for permits issued for 1981 be transferred to the fisheries loan fund.

Pub. L. 96-561, §232(a), substituted provision directing that fees be formulated so as to ensure that receipts resulting from payments for fees issued for 1981 are not less than an amount equal to 7 percent of the ex vessel value of the total harvest by foreign fishing vessels in the fishery conservation zone during 1979 and that the fees collected for permits issued for 1981 be transferred to the fisheries loan fund for provision permitting the Secretary, in determining the level of fees, to take into account the cost of carrying out the provisions of this chapter with respect to foreign fishing, including, but not limited to, the cost of fishery conservation and management, fisheries research, administration, and enforcement.

1978—Subsec. (b)(3)(D) to (F). Pub. L. 95-354, §4(5), in subpar. (D) substituted provisions relating to estimation of amount of tonnage which will be caught, taken, or harvested, for provisions relating to the amount of fish or tonnage of catch contemplated for each vessel, added subpar. (E), and redesignated former subpar. (E) as (F).

Subsec. (b)(4). Pub. L. 95-354, §4(6), substituted provisions relating to publication of the notice of receipt of the application in the Federal Register, for provisions relating to publication of the application in the Federal Register.

Subsec. (b)(6). Pub. L. 95-354, §4(7), redesignated existing provisions as subpar. (A) inserted reference to subpar. (B), and added subpar. (B).

Subsec. (b)(7)(D) to (F). Pub. L. 95-354, §4(8), added subpars. (D) and (E) and redesignated former subpar. (D) as (F).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102-251, set out as a note under section 773 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 232(a) of Pub. L. 96-561 provided that the amendment made by that section is effective with respect to permits issued under subsec. (b) of this section for 1981.

Section 232(b) of Pub. L. 96-561 provided that the amendment made by that section is effective with respect to permits issued under subsec. (b) of this section after 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1371, 1383a, 1387, 1821, 1825, 1852, 1857 of this title; title 22 section 1980.

§ 1825. Import prohibitions

(a) Determinations by Secretary of State

If the Secretary of State determines that—

(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, including fisheries for tuna species, as recognized by the United States, in accordance with fishing activities of such vessels, if any, and under terms not more restrictive than those established under sections 1821(c) and (d) and 1824(b)(7) and (10) of this title, because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;

(2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for tuna species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;

(3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority; or

(4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation—

(A) in violation of an applicable international fishery agreement;

(B) without authorization under an agreement between the United States and such nation; or

(C) as a consequence of a claim of jurisdiction which is not recognized by the United States;

he shall certify such determination to the Secretary of the Treasury.

(b) Prohibitions

Upon receipt of any certification from the Secretary of State under subsection (a) of this section, the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States—

(1) of all fish and fish products from the fishery involved, if any; and

(2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriate to carry out the purposes of this section.

(c) Removal of prohibition

If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.

(d) Definitions

As used in this section—

(1) The term “fish” includes any highly migratory species.

(2) The term “fish products” means any article which is produced from or composed of (in whole or in part) any fish.

(Pub. L. 94-265, title II, §205, Apr. 13, 1976, 90 Stat. 345; Pub. L. 101-627, title I, §105(b)(1), Nov. 28, 1990, 104 Stat. 4440.)

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-627, §105(b)(1)(A), inserted “including fisheries for tuna species,” after “authority,” and struck out “traditional” after “in accordance with”.

Subsec. (a)(2). Pub. L. 101-627, §105(b)(1)(B), substituted “tuna” for “highly migratory”.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 105(b)(2) of Pub. L. 101-627 provided that: “The amendments made by this subsection [amending this section] shall take effect on January 1, 1992.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 972c, 973a of this title.

§ 1826. Large-scale driftnet fishing

(a) Short title

This section incorporates and expands upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 and may be cited as the “Driftnet Act Amendments of 1990”.

(b) Findings

The Congress finds that—

(1) the continued widespread use of large-scale driftnets beyond the exclusive economic zone of any nation is a destructive fishing practice that poses a threat to living marine resources of the world’s oceans, including but

not limited to the North and South Pacific Ocean and the Bering Sea;

(2) the use of large-scale driftnets is expanding into new regions of the world’s oceans, including the Atlantic Ocean and Caribbean Sea;

(3) there is a pressing need for detailed and reliable information on the number of seabirds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished large-scale driftnets and in large-scale driftnets that are lost, abandoned, or discarded;

(4) increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of large-scale driftnet fishing on living marine resources;

(5) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44-225, approved December 22, 1989, by the General Assembly, that a moratorium should be imposed by June 30, 1992, on the use of large-scale driftnets beyond the exclusive economic zone of any nation;

(6) the nations of the South Pacific have agreed to a moratorium on the use of large-scale driftnets in the South Pacific through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989; and

(7) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility be exercised by persons fishing or developing new fisheries beyond the exclusive economic zone of any nation.

(c) Policy

It is declared to be the policy of the Congress in this section that the United States should—

(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44-225;

(2) support the Tarawa Declaration and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; and

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.

(d) International agreements

The Secretary, through the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall seek to secure international agreements to implement immediately the findings, policy, and provisions of this section, and in particular an international ban on large-scale driftnet fishing. The Secretary, through the Secretary of State, shall include, in any agreement which addresses the taking of living marine resources of the United States, provisions to ensure that—

(1) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, including vessels that may operate independently to develop new fishing areas, which operate beyond the exclusive economic zone of any nation, is included in such agreement;

(2) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, which operates beyond the exclusive economic zone of any nation, is equipped with satellite transmitters which provide real-time position information accessible to the United States;

(3) statistically reliable monitoring by the United States is carried out, through the use of on-board observers or through dedicated platforms provided by foreign nations that are parties to the agreement, of all target and nontarget fish species, marine mammals, sea turtles, and sea birds entangled or killed by large-scale driftnets used by fishing vessels of foreign nations that are parties to the agreement;

(4) officials of the United States have the right to board and inspect for violations of the agreement any large-scale driftnet fishing vessels operating under the flag of a foreign nation that is party to the agreement at any time while such vessel is operating in designated areas beyond the exclusive economic zone of any nation;

(5) all catch landed or transshipped at sea by large-scale driftnet fishing vessels of a foreign nation that is a party to the agreement, and which are operated beyond the exclusive economic zone of any nation, is reliably monitored and documented;

(6) time and area restrictions are imposed on the use of large-scale driftnets in order to prevent interception of anadromous species;

(7) all large-scale driftnets used are constructed, insofar as feasible, with biodegradable materials which break into segments that do not represent a threat to living marine resources;

(8) all large-scale driftnets are marked at appropriate intervals in a manner that conclusively identifies the vessel and flag nation responsible for each such driftnet;

(9) the taking of nontarget fish species, marine mammals, sea turtles, seabirds, and endangered species or other species protected by international agreements to which the United States is a party is minimized and does not pose a threat to existing fisheries or the long-term health of living marine resources; and

(10) definitive steps are agreed upon to ensure that parties to the agreement comply with the spirit of other international agreements and resolutions concerning the use of large-scale driftnets beyond the exclusive economic zone of any nation.

(e) Report

Not later than January 1, 1991, and every year thereafter until the purposes of this section are met, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report—

(1) describing the steps taken to carry out the provisions of this section, particularly subsection (c) of this section;

(2) evaluating the progress of those efforts, the impacts on living marine resources, in-

cluding available observer data, and specifying plans for further action;

(3) identifying and evaluating the effectiveness of unilateral measures and multilateral measures, including sanctions, that are available to encourage nations to agree to and comply with this section, and recommendations for legislation to authorize any additional measures that are needed if those are considered ineffective;

(4) identifying, evaluating, and making any recommendations considered necessary to improve the effectiveness of the law, policy, and procedures governing enforcement of the exclusive management authority of the United States over anadromous species against fishing vessels engaged in fishing beyond the exclusive economic zone of any nation;

(5) containing a list and description of any new fisheries developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

(6) containing a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes.

(f) Certification

If at any time the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (e)(6) of this section, the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 1978(a) of title 22.

(g) Effect on sovereign rights

This section shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983, and reflected in this chapter or other existing law.

(h) “Living marine resources” defined

As used in this section, the term “living marine resources” includes fish, marine mammals, sea turtles, and seabirds and other waterfowl.

(Pub. L. 94-265, title II, §206, as added Pub. L. 95-6, §3(1), Feb. 21, 1977, 91 Stat. 15; amended Pub. L. 99-659, title I, §101(c)(2), Nov. 14, 1986, 100 Stat. 3707; Pub. L. 101-627, title I, §107(a), Nov. 28, 1990, 104 Stat. 4441.)

REFERENCES IN TEXT

The Driftnet Impact Monitoring, Assessment, and Control Act of 1987, referred to in subsec. (a), is title IV of Pub. L. 100-220, which is set out as a note under section 1822 of this title.

Presidential Proclamation Numbered 5030, referred to in subsec. (g), is set out under section 1453 of this title.

AMENDMENTS

1990—Pub. L. 101-627 amended section generally, substituting provisions relating to large-scale driftnet

fishing for provisions relating to transitional provisions.

1986—Subsec. (b). Pub. L. 99-659 substituted “exclusive economic zone” for “fishery conservation zone”.

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

§ 1826a. Denial of port privileges and sanctions for high seas large-scale driftnet fishing

(a) Denial of port privileges

(1) Publication of list

Not later than 30 days after November 2, 1992, and periodically thereafter, the Secretary of Commerce, in consultation with the Secretary of State, shall publish a list of nations whose nationals or vessels conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation.

(2) Denial of port privileges

The Secretary of the Treasury shall, in accordance with recognized principles of international law—

(A) withhold or revoke the clearance required by section 91 of title 46, Appendix, for any large-scale driftnet fishing vessel that is documented under the laws of the United States or of a nation included on a list published under paragraph (1); and

(B) deny entry of that vessel to any place in the United States and to the navigable waters of the United States.

(3) Notification of nation

Before the publication of a list of nations under paragraph (1), the Secretary of State shall notify each nation included on that list regarding—

(A) the effect of that publication on port privileges of vessels of that nation under paragraph (1); and

(B) any sanctions or requirements, under this Act or any other law, that may be imposed on that nation if nationals or vessels of that nation continue to conduct large-scale driftnet fishing beyond the exclusive economic zone of any nation after December 31, 1992.

(b) Sanctions

(1) Identifications

(A) Initial identifications

Not later than January 10, 1993, the Secretary of Commerce shall—

(i) identify each nation whose nationals or vessels are conducting large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

(ii) notify the President and that nation of the identification under clause (i).

(B) Additional identifications

At any time after January 10, 1993, whenever the Secretary of Commerce has reason to believe that the nationals or vessels of any nation are conducting large-scale driftnet fishing beyond the exclusive economic zone of any nation, the Secretary of Commerce shall—

(i) identify that nation; and

(ii) notify the President and that nation of the identification under clause (i).

(2) Consultations

Not later than 30 days after a nation is identified under paragraph (1)(B), the President shall enter into consultations with the government of that nation for the purpose of obtaining an agreement that will effect the immediate termination of large-scale driftnet fishing by the nationals or vessels of that nation beyond the exclusive economic zone of any nation.

(3) Prohibition on imports of fish and fish products and sport fishing equipment

(A) Prohibition

The President—

(i) upon receipt of notification of the identification of a nation under paragraph (1)(A); or

(ii) if the consultations with the government of a nation under paragraph (2) are not satisfactorily concluded within ninety days, shall direct the Secretary of the Treasury to prohibit the importation into the United States of fish and fish products and sport fishing equipment (as that term is defined in section 4162 of title 26) from that nation.

(B) Implementation of prohibition

With respect to an import prohibition directed under subparagraph (A), the Secretary of the Treasury shall implement such prohibition not later than the date that is forty-five days after the date on which the Secretary has received the direction from the President.

(C) Public notice of prohibition

Before the effective date of any import prohibition under this paragraph, the Secretary of the Treasury shall provide public notice of the impending prohibition.

(4) Additional economic sanctions

(A) Determination of effectiveness of sanctions

Not later than six months after the date the Secretary of Commerce identifies a nation under paragraph (1), the Secretary shall determine whether—

(i) any prohibition established under paragraph (3) is insufficient to cause that nation to terminate large-scale driftnet fishing conducted by its nationals and vessels beyond the exclusive economic zone of any nation; or

(ii) that nation has retaliated against the United States as a result of that prohibition.

(B) Certification

The Secretary of Commerce shall certify to the President each affirmative determination under subparagraph (A) with respect to a nation.

(C) Effect of certification

Certification by the Secretary of Commerce under subparagraph (B) is deemed to be a certification under section 1978(a) of title 22.

(Pub. L. 102-582, title I, §101, Nov. 2, 1992, 106 Stat. 4901.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(3)(B), is Pub. L. 102-582, Nov. 2, 1992, 106 Stat. 4900, known as the High Seas Driftnet Fisheries Enforcement Act, which enacted sections 1826a to 1826c of this title and section 1707a of Title 46, Appendix, Shipping, amended sections 1362, 1371, 1852, and 1862 of this title, section 1978 of Title 22, Foreign Relations and Intercourse, and section 2110 of Title 46, repealed section 1111c of Title 46, Appendix, and enacted provisions set out as notes under this section and sections 1801, 1823, and 1861 of this title and section 2110 of Title 46. For complete classification of this Act to the Code, see Short Title of 1992 Amendments note set out under section 1801 of this title and Tables.

CODIFICATION

Section was enacted as part of the High Seas Driftnet Fisheries Enforcement Act, and not as part of the Magnuson Fishery Conservation and Management Act which comprises this chapter.

HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT;
CONGRESSIONAL STATEMENT OF FINDINGS AND POLICY

Section 2 of Pub. L. 102-582 provided that:

“(a) FINDINGS.—Congress makes the following findings:

“(1) Large-scale driftnet fishing on the high seas is highly destructive to the living marine resources and ocean ecosystems of the world’s oceans, including anadromous fish and other living marine resources of the United States.

“(2) The cumulative effects of large-scale driftnet fishing pose a significant threat to the marine ecosystem, and slow-reproducing species like marine mammals, sharks, and seabirds may require many years to recover.

“(3) Members of the international community have reviewed the best available scientific data on the impacts of large-scale pelagic driftnet fishing, and have failed to conclude that this practice has no significant adverse impacts which threaten the conservation and sustainable management of living marine resources.

“(4) The United Nations, via General Assembly Resolutions numbered 44-225, 45-197, and most recently 46-215 (adopted on December 20, 1991), has called for a worldwide moratorium on all high seas driftnet fishing by December 31, 1992, in all the world’s oceans, including enclosed seas and semi-enclosed seas.

“(5) The United Nations has commended the unilateral, regional, and international efforts undertaken by members of the international community and international organizations to implement and support the objectives of the General Assembly resolutions.

“(6) Operative paragraph (4) of United Nations General Assembly Resolution numbered 46-215 specifically ‘encourages all members of the international community to take measures individually and collectively to prevent large-scale pelagic driftnet fishing operations on the high seas of the world’s oceans and seas’.

“(7) The United States, in section 307(1)(M) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857(1)(M)), has specifically prohibited the practice of large-scale driftnet fishing by United States nationals and vessels both within the exclusive economic zone of the United States and beyond the exclusive economic zone of any nation.

“(8) The Senate, through Senate Resolution 396 of the One Hundredth Congress (approved on March 18, 1988), has called for a moratorium on fishing in the Central Bering Sea and the United States has taken concrete steps to implement such moratorium through international negotiations.

“(9) Despite the continued evidence of a decline in the fishery resources of the Bering Sea and the multi-year cooperative negotiations undertaken by the United States, the Russian Federation, Japan, and other concerned fishing nations, some nations refuse to agree to measures to reduce or eliminate unregulated fishing practices in the waters of the Bering Sea beyond the exclusive economic zones of the United States and the Russian Federation.

“(10) In order to ensure that the global moratorium on large-scale driftnet fishing called for in United Nations General Assembly Resolution numbered 46-215 takes effect by December 31, 1992, and that unregulated fishing practices in the waters of the Central Bering Sea are reduced or eliminated, the United States should take the actions described in this Act [see Short Title of 1992 Amendments note set out under section 1801 of this title] and encourage other nations to take similar action.

“(b) POLICY.—It is the stated policy of the United States to—

“(1) implement United Nations General Assembly Resolution numbered 46-215, approved unanimously on December 20, 1991, which calls for an immediate cessation to further expansion of large-scale driftnet fishing, a 50 percent reduction in existing large-scale driftnet fishing effort by June 30, 1992, and a global moratorium on the use of large-scale driftnets beyond the exclusive economic zone of any nation by December 31, 1992;

“(2) bring about a moratorium on fishing in the Central Bering Sea, or an international conservation and management agreement to which the United States and the Russian Federation are parties that regulates fishing in the Central Bering Sea; and

“(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1826b, 1826c of this title.

§ 1826b. Duration of denial of port privileges and sanctions

Any denial of port privileges or sanction under section 1826a of this title with respect to a nation shall remain in effect until such time as the Secretary of Commerce certifies to the President and the Congress that such nation has terminated large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation.

(Pub. L. 102-582, title I, §102, Nov. 2, 1992, 106 Stat. 4903.)

CODIFICATION

Section was enacted as part of the High Seas Driftnet Fisheries Enforcement Act, and not as part of the Magnuson Fishery Conservation and Management Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1826c of this title.

§ 1826c. Definitions

In sections 1826a to 1826c of this title, the following definitions apply:

(1) Fish and fish products

The term “fish and fish products” means any aquatic species (including marine mammals and plants) and all products thereof exported from a nation, whether or not taken by fishing vessels of that nation or packed, processed, or otherwise prepared for export in that nation or within the jurisdiction thereof.

(2) Large-scale driftnet fishing**(A) In general**

Except as provided in subparagraph (B), the term “large-scale driftnet fishing” means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(B) Exception

Until January 1, 1994, the term “large-scale driftnet fishing” does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

(3) Large-scale driftnet fishing vessel

The term “large-scale driftnet fishing vessel” means any vessel which is—

(A) used for, equipped to be used for, or of a type which is normally used for large-scale driftnet fishing; or

(B) used for aiding or assisting one or more vessels at sea in the performance of large-scale driftnet fishing, including preparation, supply, storage, refrigeration, transportation, or processing.

(Pub. L. 102-582, title I, §104, Nov. 2, 1992, 106 Stat. 4903.)

REFERENCES IN TEXT

Sections 1826a to 1826c of this title, referred to in text, was in the original “this title”, meaning title I of Pub. L. 102-582, Nov. 2, 1992, 106 Stat. 4901, which enacted sections 1826a to 1826c of this title and amended section 1371 of this title. For complete classification of title I to the Code, see Tables.

CODIFICATION

Section was enacted as part of the High Seas Driftnet Fisheries Enforcement Act, and not as part of the Magnuson Fishery Conservation and Management Act which comprises this chapter.

§ 1826d. Prohibition

The United States, or any agency or official acting on behalf of the United States, may not enter into any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that would prevent full implementation of the global moratorium on

large-scale driftnet fishing on the high seas, as such moratorium is expressed in Resolution 46/215 of the United Nations General Assembly.

(Pub. L. 104-43, title VI, §603, Nov. 3, 1995, 109 Stat. 392.)

CODIFICATION

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson Fishery Conservation and Management Act which comprises this chapter.

CONGRESSIONAL FINDINGS

Section 602 of Pub. L. 104-43 provided that: “The Congress finds that—

“(1) Congress has enacted and the President has signed into law numerous Acts to control or prohibit large-scale driftnet fishing both within the jurisdiction of the United States and beyond the exclusive economic zone of any nation, including the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (title IV, Public Law 100-220) [16 U.S.C. 1822 note], the Driftnet Act Amendments of 1990 (Public Law 101-627) [16 U.S.C. 1826], and the High Seas Driftnet Fisheries Enforcement Act (title I, Public Law 102-582) [see Short Title of 1992 Amendment note set out under section 1801 of this title];

“(2) the United States is a party to the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, also known as the Wellington Convention;

“(3) the General Assembly of the United Nations has adopted three resolutions and three decisions which established and reaffirm a global moratorium on large-scale driftnet fishing on the high seas, beginning with Resolution 44/225 in 1989 and most recently in Decision 48/445 in 1993;

“(4) the General Assembly of the United Nations adopted these resolutions and decisions at the request of the United States and other concerned nations;

“(5) the best scientific information demonstrates the wastefulness and potentially destructive impacts of large-scale driftnet fishing on living marine resources and seabirds; and

“(6) Resolution 46/215 of the United Nations General Assembly calls on all nations, both individually and collectively, to prevent large-scale driftnet fishing on the high seas.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1826f of this title.

§ 1826e. Negotiations

The Secretary of State, on behalf of the United States, shall seek to enhance the implementation and effectiveness of the United Nations General Assembly resolutions and decisions regarding the moratorium on large-scale driftnet fishing on the high seas through appropriate international agreements and organizations.

(Pub. L. 104-43, title VI, §604, Nov. 3, 1995, 109 Stat. 392.)

CODIFICATION

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson Fishery Conservation and Management Act which comprises this chapter.

§ 1826f. Certification

The Secretary of State shall determine in writing prior to the signing or provisional appli-

cation by the United States of any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that the prohibition contained in section 1826d of this title will not be violated if such agreement is signed or provisionally applied.

(Pub. L. 104-43, title VI, §605, Nov. 3, 1995, 109 Stat. 392.)

CODIFICATION

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson Fishery Conservation and Management Act which comprises this chapter.

§ 1826g. Enforcement

The President shall utilize appropriate assets of the Department of Defense, the United States Coast Guard, and other Federal agencies to detect, monitor, and prevent violations of the United Nations moratorium on large-scale driftnet fishing on the high seas for all fisheries under the jurisdiction of the United States and, in the case of fisheries not under the jurisdiction of the United States, to the fullest extent permitted under international law.

(Pub. L. 104-43, title VI, §606, Nov. 3, 1995, 109 Stat. 392.)

CODIFICATION

Section was enacted as part of the High Seas Driftnet Fishing Moratorium Protection Act, and also as part of the Fisheries Act of 1995, and not as part of the Magnuson Fishery Conservation and Management Act which comprises this chapter.

§ 1827. Observer program regarding certain foreign fishing

(a) Definitions

As used in this section—

(1) The term “Act of 1976” means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(2) The term “billfish” means any species of marlin, spearfish, sailfish or swordfish.

(3) The term “Secretary” means the Secretary of Commerce.

(b) Observer program

The Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel—

(1) is in waters that are within—

(A) the fishery conservation zone established under section 101 of the Act of 1976 [16 U.S.C. 1811],¹ and

(B) the Convention area as defined in Article I of the International Convention for the Conservation of Atlantic Tunas; and

(2) is taking or attempting to take any species of fish if such taking or attempting to take may result in the incidental taking of billfish.

The Secretary may acquire observers for such program through contract with qualified private persons.

¹ See References in Text note below.

(c) Functions of observers

United States observers, while aboard foreign fishing vessels as required under subsection (b) of this section, shall carry out such scientific and other functions as the Secretary deems necessary or appropriate to carry out this section.

(d) Fees

There is imposed for each year after 1980 on the owner or operator of each foreign fishing vessel that, in the judgment of the Secretary, will engage in fishing in waters described in subsection (b)(1) of this section during that year which may result in the incidental taking of billfish a fee in an amount sufficient to cover all of the costs of providing an observer aboard that vessel under the program established under subsection (a) of this section. The fees imposed under this subsection for any year shall be paid to the Secretary before that year begins. All fees collected by the Secretary under this subsection shall be deposited in the Fund established by subsection (e) of this section.

(e) Fund

There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this section. The Fund shall consist of the fees deposited into it as required under subsection (d) of this section. All payments made by the Secretary to carry out this section shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(f) Prohibited acts

(1) It is unlawful for any person who is the owner or operator of a foreign fishing vessel to which this section applies—

(A) to violate any regulation issued under subsection (g) of this section;

(B) to refuse to pay the fee imposed under subsection (d) of this section after being requested to do so by the Secretary; or

(C) to refuse to permit an individual who is authorized to act as an observer under this section with respect to that vessel to board the vessel for purposes of carrying out observer functions.

(2) Section 308 of the Act of 1976 [16 U.S.C. 1858] (relating to civil penalties) applies to any act that is unlawful under paragraph (1), and for purposes of such application the commission of any such act shall be treated as an act the commission of which is unlawful under section 307 of the Act of 1976 [16 U.S.C. 1857].

(g) Regulations

The Secretary shall issue such regulations as are necessary or appropriate to carry out this section.

(Pub. L. 96-339, §2, Sept. 4, 1980, 94 Stat. 1069; Pub. L. 96-561, title II, §238(b), Dec. 22, 1980, 94 Stat. 3300.)

REFERENCES IN TEXT

The Magnuson Fishery Conservation and Management Act, referred to in subsec. (a)(1), is Pub. L. 94-265,

Apr. 13, 1976, 90 Stat. 331, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

Section 101 of the Act of 1976 [16 U.S.C. 1811], referred to in subsec. (b)(1)(A), which established the fishery conservation zone, was amended generally by Pub. L. 99-659, title I, §101(b), Nov. 14, 1986, 100 Stat. 3706, and now relates to United States sovereign rights to fish and fishery management authority within the exclusive economic zone.

CODIFICATION

Section was not enacted as part of the Magnuson Fishery Conservation and Management Act which comprises this chapter.

AMENDMENTS

1980—Subsec. (a)(1). Pub. L. 96-561 substituted “Magnuson Fishery Conservation and Management Act” for “Fishery Conservation and Management Act of 1976”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-561 effective 15 days after Dec. 22, 1980, see section 238 of Pub. L. 96-561, set out as a Short Title of 1980 Amendment note under section 1801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971h, 971i of this title.

SUBCHAPTER IV—NATIONAL FISHERY MANAGEMENT PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1802, 1821, 3343 of this title.

§ 1851. National standards for fishery conservation and management

(a) In general

Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this subchapter shall be consistent with the following national standards for fishery conservation and management:

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except

that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) Guidelines

The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.

(Pub. L. 94-265, title III, §301, Apr. 13, 1976, 90 Stat. 346; Pub. L. 97-453, §4, Jan. 12, 1983, 96 Stat. 2484; Pub. L. 98-623, title IV, §404(3), Nov. 8, 1984, 98 Stat. 3408.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-623 inserted “for the United States fishing industry”.

1983—Subsec. (b). Pub. L. 97-453 substituted “advisory guidelines (which shall not have the force and effect of law)” for “guidelines”.

ALBEMARLE SOUND-ROANOKE RIVER BASIN: STRIPED BASS STUDY

Pub. L. 100-589, §5, Nov. 3, 1988, 102 Stat. 2984, provided that:

“(a) FINDINGS.—The Congress finds that:

“(1) The anadromous stock of striped bass in the Albemarle Sound-Roanoke River Basin area of North Carolina sustained important commercial and recreational fisheries as recently as the 1960’s and 1970’s.

“(2) This stock has been declining for some time and is severely depressed at present, and may soon reach a level from which recovery will be exceptionally difficult.

“(3) The reasons for this decline are thought to include fishing; other human activities and environmental factors, such as unsuitable water flow before, during, and after critical spawning periods; degradation of water quality by pollutants; the impact of eutrophication on the food chain, and the impact of changing land use activities.

“(4) Current Federal and interstate efforts to conserve the Atlantic striped bass, while effective in identifying factors contributing to the decline of other important Atlantic coastal migratory stocks of striped bass and steps that will be effective in reversing that decline, have not made a major contribution to the protection and restoration of the Albemarle Sound-Roanoke River stock of striped bass.

“(5) Because the striped bass and the aquatic environment of the Albemarle Sound-Roanoke River basin presently are being significantly affected by combined but not fully understood causes, a study should be undertaken to obtain additional biological information to understand the significance of fishing, water flows, and other factors in the decline of the striped bass populations in the Albemarle Sound-Roanoke River basin and, if feasible, develop an effective course of action for restoring these important stocks of striped bass.

“(b) STUDY.—

“(1) IN GENERAL.—The Director of the United States Fish and Wildlife Service, in consultation with the Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration shall—

“(A) immediately undertake a biological study of the striped bass fishery resources and habitats of the Albemarle Sound-Roanoke River basin area;

“(B) develop short-term and long-term recommendations for Federal and State government

agencies for restoring and conserving such resources and habitats; and

“(C) submit the results of such study and such recommendations to the Congress and to the States of North Carolina and Virginia as soon as practicable, but not later than 36 months after the date of the enactment of this Act [Nov. 3, 1988].

“(2) CONTENTS OF THE STUDY.—The study conducted under this subsection shall, to the extent existing data are adequate, use such existing data and shall include—

“(A) a description of the Albemarle Sound-Roanoke River basin area, and an investigation and analysis of the effects of land and water use practices on the striped bass population and habitats of the area;

“(B) an investigation and analysis of the abundance and age and geographic distribution of the Albemarle Sound-Roanoke River stock of striped bass, including the amount and geographical location of migration and spawning habitat;

“(C) an investigation and analysis of factors that may affect the abundance and age and geographic distribution of the Albemarle Sound-Roanoke River stock of striped bass, including—

“(i) the extent and causes of mortality at successive stages in the life cycle of striped bass, including mortality due to recreational and commercial fishing; and

“(ii) the combined effects of pollution and other natural and human alterations of the physical environment, including the effects of water withdrawals, discharges, and flows, on striped bass migration and spawning and on the viability and condition of eggs and larval fish;

“(D) an investigation and analysis of the status and effectiveness of current striped bass management measures implemented by State and Federal authorities, including State fishing regulations and Federal fish stocking activities, reservoir management and water flow regulation, and an analysis of whether any additional State or Federal measures would be effective in halting the decline and initiating the recovery of the Albemarle Sound-Roanoke River stock of striped bass; and

“(E) a recommendation of whether conservation of the Albemarle [sic] Sound-Roanoke River stocks of striped bass could be improved by management of these stocks under the provisions of the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Plan for Striped Bass and the Atlantic Striped Bass Conservation Act [Pub. L. 98-613, set out below].

“(c) PARTICIPATION BY STATE AGENCIES.—

“(1) The Director of the North Carolina Division of Marine Fisheries, the Executive Director of the North Carolina Wildlife Resources Commission, the Secretary of the Virginia Department of Natural Resources, and the District Engineer for the Wilmington District of the United States Army Corps of Engineers shall be invited to have their agencies participate in conducting the study and developing recommendations pursuant to subsection (b).

“(2) To facilitate participation by the agencies referred to in paragraph (1), should they decide to participate, a Memorandum of Understanding will be executed with such officials setting forth the respective responsibilities of the entities involved in conducting the study and developing those recommendations.

“(d) CONSULTATION.—In carrying out the study under subsection (b), the Atlantic States Marine Fisheries Commission, other Federal agencies, the Albemarle-Pamlico [sic] Estuarine Study, Dominion Resources, Inc./Virginia Power/North Carolina Power, affected local governments in North Carolina and Virginia, appropriate commercial and recreational fishing interests, and other interests shall be consulted, to the maximum extent practicable.

“(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated the sum of \$1,000,000 to

carry out the requirements of this section. These appropriations will remain available until expended.

“(f) STATE AUTHORITY.—Nothing in this section shall be construed as authorizing any State to manage fisheries within the jurisdiction of another State.

“(g) RESTRICTION ON USE OF OTHER FUNDS.—Amounts appropriated pursuant to the authorization contained in section 7(d) of the Anadromous Fish Conservation Act (16 U.S.C. 757g(d)) shall not be used to carry out this section.”

EXCLUSIVE ECONOMIC ZONE: ATLANTIC STRIPED BASS PROTECTION

Pub. L. 100-589, §6(a)-(f), Nov. 3, 1988, 102 Stat. 2986, as amended by Pub. L. 102-130, §4, Oct. 17, 1991, 105 Stat. 627, provided that:

“(a) REGULATION OF FISHING IN EXCLUSIVE ECONOMIC ZONE.—The Secretary of Commerce shall promulgate regulations governing the fishing for Atlantic striped bass in the exclusive economic zone that the Secretary determines to be consistent with the national standards set forth in section 301 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1851) and necessary and appropriate to—

“(1) ensure the effectiveness of State regulations or a Federal moratorium on fishing for Atlantic striped bass within the coastal waters of a coastal State; and

“(2) achieve conservation and management goals for the Atlantic striped bass resource.

“(b) CONSULTATION; PERIODIC REVIEW OF REGULATIONS.—In preparing regulations under subsection (a), the Secretary shall consult with the Atlantic States Marine Fisheries Commission, the appropriate Regional Fishery Management Councils, and each affected Federal, State, and local government entity. The Secretary shall periodically review regulations promulgated under subsection (a), and if necessary to ensure their continued consistency with the requirements of subsection (a), shall amend those regulations.

“[(c) Repealed. Pub. L. 102-130, §4(1), Oct. 17, 1991, 105 Stat. 627.]

“(d) APPLICABILITY OF MAGNUSON ACT PROVISIONS.—The provisions of sections 307, 308, 309, 310, and 311 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1857, 1858, 1859, 1860, and 1861) regarding prohibited acts, civil penalties, criminal offenses, civil forfeitures, and enforcement shall apply with respect to regulations and any plan issued under subsection (a) of this section as if such regulations or plan were issued under the Magnuson Fishery Conservation and Management Act [16 U.S.C. 1801 et seq.].

“(e) DEFINITION.—As used in this section, the term ‘exclusive economic zone’ has the meaning given such term in section 3(6) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802(6)).”

ATLANTIC STRIPED BASS CONSERVATION

Pub. L. 98-613, §§1-9, Oct. 31, 1984, 98 Stat. 3187-3190, as amended by Pub. L. 99-432, §§1-5, Oct. 1, 1986, 100 Stat. 989, 990; Pub. L. 100-589, §§1, 2, 4, 6(g), Nov. 3, 1988, 102 Stat. 2984, 2987; Pub. L. 102-130, §2, Oct. 17, 1991, 105 Stat. 626; Pub. L. 103-206, title VIII, §810, Dec. 20, 1993, 107 Stat. 2453, provided that:

“SECTION 1. SHORT TITLE.

“This Act [enacting this note and amending section 757g of this title] may be cited as the ‘Atlantic Striped Bass Conservation Act’.

“SEC. 2. FINDINGS AND PURPOSES.

“(a) FINDINGS.—The Congress finds and declares the following:

“(1) Atlantic striped bass are of historic commercial and recreational importance and economic benefit to the Atlantic coastal States and to the Nation.

“(2) As a consequence of increased fishing pressure, environmental pollution, the loss and alteration of habitat, and the inadequacy of fishery conservation and management practices and controls, certain stocks of Atlantic striped bass have been severely reduced in number.

“(3) Because no single government entity has full management authority throughout the range of the Atlantic striped bass, the harvesting and conservation of these fish have been subject to diverse, inconsistent, and intermittent State regulation that has been detrimental to the long-term maintenance of stocks of the species and to the interests of fishermen and the Nation as a whole.

“(4) It is in the national interest to implement effective procedures and measures to provide for effective interjurisdictional conservation and management of this species.

“(b) PURPOSE.—It is therefore declared to be the purpose of the Congress in this Act to support and encourage the development, implementation, and enforcement of effective interstate action regarding the conservation and management of the Atlantic striped bass.

“SEC. 3. DEFINITIONS.

“As used in this Act—

“(1) The term ‘Magnuson Act’ means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

“(2) The term ‘Atlantic striped bass’ means members of stocks or populations of the species *Morone saxatilis*, which ordinarily migrate seaward of the waters described in paragraph (3)(A)(i).

“(3) The term ‘coastal waters’ means—

“(A) for each coastal State referred to in paragraph (4)(A)—

“(i) all waters, whether salt or fresh, of the coastal State shoreward of the baseline from which the territorial sea of the United States is measured; and

“(ii) the waters of the coastal State seaward from the baseline referred to in clause (i) to the inner boundary of the exclusive economic zone; (B) for the District of Columbia, those waters within its jurisdiction; and

“(C) for the Potomac River Fisheries Commission, those waters of the Potomac River within the boundaries established by the Potomac River Compact of 1958.

“(4) The term ‘coastal State’ means—

“(A) Pennsylvania and each State of the United States bordering on the Atlantic Ocean north of the State of South Carolina;

“(B) the District of Columbia; and

“(C) the Potomac River Fisheries Commission established by the Potomac River Compact of 1958.

“(5) The term ‘Commission’ means the Atlantic States Marine Fisheries Commission established under the interstate compact consented to and approved by the Congress in Public Laws 77-539 [May 4, 1942, ch. 283, 56 Stat. 267] and 81-721 [Aug. 19, 1950, ch. 763, 64 Stat. 467].

“(6) The term ‘fishing’ means—

“(A) the catching, taking, or harvesting of Atlantic striped bass, except when incidental to harvesting that occurs in the course of commercial or recreational fish catching activities directed at a species other than Atlantic striped bass;

“(B) the attempted catching, taking, or harvesting of Atlantic striped bass; and

“(C) any operation at sea in support of, or in preparation for, any activity described in subparagraph (A) or (B).

The term does not include any scientific research authorized by the Federal Government or by any State government.

“(7) The term ‘Plan’ means the Interstate Fisheries Management Plan for Striped Bass, dated October 1, 1981, prepared by the Commission, and all amendments thereto related to fishing, including interim restoration measures for Chesapeake Bay striped bass stocks as developed by the Atlantic States Marine Fisheries Commission Striped Bass Management Board in December 1983, whether or not such language is formally adopted as an amendment to the Plan of October 1, 1981.

“(8) The term ‘Secretary’ means the Secretary of Commerce.

“(9) The term ‘Secretaries’ means the Secretary of Commerce and the Secretary of the Interior.

“SEC. 4. COMMISSION FUNCTIONS.

“(a) MONITORING OF IMPLEMENTATION AND ENFORCEMENT.—(1) During December of fiscal year 1987, and of each fiscal year thereafter, and at any other time it deems necessary, the Commission shall determine:

“(A) whether each coastal State has adopted all regulatory measures necessary to fully implement the Plan in its coastal waters; and

“(B) whether the enforcement of the Plan by each coastal State is satisfactory. Enforcement by a coastal State shall not be considered satisfactory by the Commission if, in its view, the enforcement is being carried out in such a manner that the implementation of the Plan within its coastal waters is being, or will likely be, substantially and adversely affected.

“(2) The Commission shall immediately notify the Secretaries of each negative determination made by it under this subsection.

“(b) SECRETARIAL ACTION AFTER NOTIFICATION.—Upon receiving notice from the Commission under subsection (a) that a coastal State has not taken the actions described in that subsection, the Secretaries shall determine jointly, within thirty days, whether that coastal State is in compliance with the Plan and, if the State is not in compliance, the Secretaries shall declare jointly a moratorium on fishing for Atlantic striped bass within the coastal waters of that coastal State. In making such a determination, the Secretaries shall carefully consider and review the comments of the Commission and that coastal State in question.

“SEC. 5. MORATORIUM.

“(a) DEFINITIONS.—For purposes of this section—

“(1) The term ‘moratorium area’ means the coastal waters with respect to which a declaration under section 4(b) applies.

“(2) The term ‘moratorium period’ means the period beginning on the day on which moratorium is declared under section 4(b) regarding a coastal State and ending on the day on which the Commission notifies the Secretaries that that State has taken appropriate remedial action with respect to those matters that were the cause of the moratorium being declared.

“(b) PROHIBITED ACTS DURING MORATORIUM.—During a moratorium period, it is unlawful for any person—

“(1) to engage in fishing within the moratorium area;

“(2) to land, or attempt to land, Atlantic striped bass that are caught, taken, or harvested in violation of paragraph (1);

“(3) to land lawfully harvested Atlantic striped bass within the boundaries of a coastal State when a moratorium declared under section 4(b) applies to that State; or

“(4) to fail to return to the water Atlantic striped bass to which the moratorium applies that are caught incidental to harvesting that occurs in the course of commercial or recreational fish catching activities, regardless of the physical condition of the striped bass when caught.

“(c) PENALTIES AND FORFEITURES.—(1) Any person who is found by the Secretaries, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act that is unlawful under subsection (b), shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$1,000 for each violation. Each day of continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretaries by written notice. In determining the amount of such penalty, the Secretaries shall take into account the nature, circumstances, extent, and gravity of the prohibited act committed and, with respect to the violator, the degree of culpability, any history of prior violations, ability to pay, and such other matters as justice may require.

“(2) Subsections (b) through (e) of section 308 of the Magnuson Act (16 U.S.C. 1858(b)–(e)); relating to review of civil penalties, action upon failure to pay assessment, compromise, and subpenas shall apply to penalties assessed under paragraph (1) to the same extent and in the same manner as if those penalties were assessed under subsection (a) of such section 308.

“(d) CIVIL FORFEITURES.—(1) Any vessel (including its gear, equipment, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with, or the result of, the commission of any act that is unlawful under subsection (b), shall be subject to forfeiture to the United States. All or part of the vessel may, and all such fish (or the fair market value thereof) shall, be forfeited to the United States under a civil proceeding described in paragraph (2). The district courts of the United States have jurisdiction over proceedings under this subsection.

“(2) Subsections (c) through (e) of section 310 of the Magnuson Act (16 U.S.C. 1860(c)–(e)); relating to judgment, procedure, and rebuttable presumptions) apply with respect to proceedings for forfeiture commenced under this subsection to the same extent and in the same manner as if the proceeding were commenced under subsection (a) of such section 310.

“(e) ENFORCEMENT.—(1) The Secretaries shall enforce a moratorium declared under section 4(b). The Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal department or agency and of any agency of a coastal State in carrying out that enforcement.

“(2) ENFORCEMENT AUTHORITY.—A person authorized by the Secretaries may take any action to enforce a moratorium declared under section 4(b) that an officer authorized by the Secretary under section 311(b) of the Magnuson Fishery Conservation and Management Act [16 U.S.C. 1861(b)] may take to enforce that Act [16 U.S.C. 1801 et seq.].

“(3) REGULATIONS.—The Secretaries may issue regulations to implement this subsection.

“SEC. 6. COMPREHENSIVE ANNUAL SURVEYS.

“For the purposes of implementing the provisions of this Act, the Secretary and the Secretary of the Interior shall jointly conduct a comprehensive annual survey of the Atlantic striped bass fisheries. Each survey shall include, but not be limited to, a compilation and assessment of the recreational and commercial landings of that species in the coastal States during the period considered in the survey. The results of each annual survey shall be published in the Federal Register.

“SEC. 7. AUTHORIZATION OF APPROPRIATIONS; COOPERATIVE AGREEMENTS.

“(a) AUTHORIZATION.—For each of fiscal years 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, and 1994, there are authorized to be appropriated such sums as may be necessary or appropriate to carry out this Act.

“(b) COOPERATIVE AGREEMENTS.—The Secretaries may enter into cooperative agreements with the Atlantic States Marine Fisheries Commission for the purpose of using amounts appropriated pursuant to this section to provide financial assistance to the Commission for carrying out its functions under this Act.

“SEC. 8. SECRETARIAL STUDY.

“Within six months of the date of enactment of this Act [Oct. 31, 1984], the Secretaries shall review the existing Plan and shall report to the Commission, the Chairman of the House Committee on Merchant Marine and Fisheries, the Chairman of the Senate Committee on Commerce, Science and Transportation and the Chairman of the Senate Committee on Environment and Public Works on the adequacy of the Plan to achieve the purposes of this Act. Such report shall include recommendations for additional measures that may need to be taken and include recommendations concerning specific State actions regarding the management and conservation of striped bass.

“SEC. 9. [Repealed. Pub. L. 103–206, title VIII, §810, Dec. 20, 1993, 107 Stat. 2453.]”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1434, 1802, 5103 of this title.

§ 1852. Regional Fishery Management Councils

(a) Establishment

There shall be established, within 120 days after April 13, 1976, eight Regional Fishery Management Councils, as follows:

(1) New England Council

The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in section 1854(f)(3) of this title). The New England Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).

(2) Mid-Atlantic Council

The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in section 1854(f)(3) of this title). The Mid-Atlantic Council shall have 19 voting members, including 12 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).

(3) South Atlantic Council

The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States (except as provided in section 1854(f)(3) of this title). The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).

(4) Caribbean Council

The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States (except as provided in section 1854(f)(3) of this title). The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).

(5) Gulf Council

The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in

the Gulf of Mexico seaward of such States (except as provided in section 1854(f)(3) of this title). The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).

(6) Pacific Council

The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each such State).

(7) North Pacific Council

The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary in accordance with subsection (b)(2) of this section (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).

(8) Western Pacific Council

The Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area. The Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) of this section (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, Guam, and the Northern Mariana Islands).

Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.

(b) Voting members

(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

(C) The members required to be appointed by the Secretary in accordance with subsection (b)(2) of this section.

(2)(A) The members of each Council required to be appointed by the Secretary must be individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned. Within nine months after November 28, 1990, the Secretary shall, by regulation, prescribe criteria for determining whether an individual satisfies the requirements of this subparagraph.

(B) The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. On January 31, 1991, and each year thereafter, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report on the actions taken by the Secretary to ensure that such fair and balanced apportionment is achieved. The report shall—

(i) list the fisheries under the jurisdiction of each Council, outlining for each fishery the type and quantity of fish harvested, fishing and processing methods employed, the number of participants, the duration and range of the fishery, and other distinguishing characteristics;

(ii) assess the membership of each Council in terms of the apportionment of the active participants in each such fishery; and

(iii) state the Secretary's plans and schedule for actions to achieve a fair and balanced apportionment on the Council for the active participants in any such fishery.

(C) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has determined that each such individual is qualified under the requirements of subparagraph (A) and unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the State regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy and shall be accompanied by a statement by the Governor explaining how each such individual meets the requirements of subparagraph (A). The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of such requirements. If the Secretary determines that any individual is not qualified, the Secretary shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable fi-

financial disclosure requirements under subsection (k) of this section.

(D) Whenever the Secretary makes an appointment to a Council, the Secretary shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.

(3) Each voting member appointed to a Council by the Secretary in accordance with subsection (b)(2) of this section shall serve for a term of 3 years; except that the Secretary may designate a shorter term if necessary to provide for balanced expiration to terms of office. No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term completed prior to December 31, 1987, shall not be counted in determining the number of consecutive terms served by any Council member.

(4) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(5) The Secretary may remove for cause any member of a Council required to be appointed by the Secretary in accordance with subsection (b)(2) of this section if the Council concerned first recommends removal by not less than two-thirds of the members who are voting members. A removal recommendation of a Council must be in writing and accompanied by a statement of the reasons upon which the recommendation is based.

(c) Nonvoting members

(1) The nonvoting members of each Council shall be:

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.

(B) The Commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.

(C) The executive director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

(d) Compensation and expenses

The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall, until January 1, 1992, receive compensation at the daily rate for GS-18 of the General Schedule, and after December 31, 1991, at the daily rate for GS-16 of the General Schedule, when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C) of this section, and the nonvoting member appointed

pursuant to subsection (c)(2) of this section shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members and Council staff members may be reimbursed for actual expenses.

(e) Transaction of business

(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet at appropriate times and places in any of the constituent States of the Council at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement. The regional director of the National Marine Fisheries Service serving on the Council, or the regional director's designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter.

(f) Staff and administration

(1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this chapter.

(3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

(4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.

(6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this chapter, in accordance with such uniform standards as are prescribed by the Secretary. The procedures of a Council, and of its scientific and statistical committee and advisory panels established under subsection (g) of this section, must be consistent with the procedural guidelines set forth in subsection (i)(2) of this section. Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.

(7) The Secretary shall pay—

(A) the compensation and expenses provided for in subsection (d) of this section;

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g) of this section; and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

(g) Committees and panels

(1) Each Council shall establish and maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(2) Each Council shall establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under this chapter.

(3)(A) Each Council shall establish and maintain a fishing industry advisory committee which shall provide information and recommendations on, and assist in the development of, fishery management plans and amendments to such plans.

(B) Appointments to a committee established under subparagraph (A) shall be made by each Council in such a manner as to provide fair representation to commercial fishing interests in the geographical area of authority of the Council.

(4) Decisions and recommendations made by committees and panels established under this subsection shall be considered to be advisory in nature.

(h) Functions

Each Council shall, in accordance with the provisions of this chapter—

(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery (except as provided in section 1854(f)(3) of this title) within its geographical area of authority that requires conservation and management and, from time to time, such amendments to each such plan as are necessary;

(2) prepare comments on any application for foreign fishing transmitted to it under section 1824(b)(4)(C) of this title, and any fishery management plan or amendment transmitted to it under section 1854(c)(2) of this title;

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this chapter (and for purposes of this paragraph, the term “geographical area concerned” may include an area under the authority of another Council if the fish in the fishery concerned migrate into,

or occur in, that area or if the matters being heard affect fishermen of that area; but not unless such other Council is first consulted regarding the conduct of such hearings within its area);

(4) submit to the Secretary such periodic reports as the Council deems appropriate, and any other relevant report which may be requested by the Secretary;

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 1853(a)(3) and (4) of this title with respect to the optimum yield from, the capacity and extent to which United States fish processors will process United States harvested fish from, and the total allowable level of foreign fishing in, each fishery (except as provided in section 1854(f)(3) of this title) within its geographical area of authority; and

(6) conduct any other activities which are required by, or provided for in, this chapter or which are necessary and appropriate to the foregoing functions.

(i) Fishery habitat concerns

(1) Each Council—

(A) may comment on and make recommendations concerning any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction; and

(B) shall comment on and make recommendations concerning any such activity that, in the view of the Council, is likely to substantially affect the habitat of an anadromous fishery resource under its jurisdiction.

(2) Within 45 days after receiving a comment or recommendation under paragraph (1) from a Council, a Federal agency shall provide a detailed response, in writing, to the Council regarding the matter. In the case of a comment or recommendation under paragraph (1)(B), the response shall include a description of measures being considered by the agency for mitigating or offsetting the impact of the activity on such habitat.

(j) Procedural matters

(1) The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Councils or to the scientific and statistical committees or advisory panels of the Councils.

(2) The following guidelines apply with respect to the conduct of business at meetings of a Council, and of the scientific and statistical committee and advisory panels of a Council:

(A) Unless closed in accordance with paragraph (3), each regular meeting and each emergency meeting shall be open to the public.

(B) Emergency meetings shall be held at the call of the chairman or equivalent presiding officer.

(C) Timely public notice of each regular meeting and each emergency meeting, including the time, place, and agenda of the meeting, shall be published in local newspapers in the major fishing ports of the Council's region (and in other major fishing ports having a direct interest in the affected fishery) and such

notice may be given by such other means as will result in wide publicity. Timely notice of each regular meeting shall also be published in the Federal Register.

(D) Interested persons shall be permitted to present oral or written statements regarding the matters on the agenda at meetings.

(E) Minutes of each meeting shall be kept and shall contain a record of the persons present, an accurate description of matters discussed and conclusions reached, and copies of all statements filed.

(F) Subject to the procedures established by the Council under paragraph (4), and the guidelines prescribed by the Secretary under section 1853(d) of this title, relating to confidentiality, the administrative record, including minutes required under subparagraph (E), of each meeting, and records or other documents which were made available to or prepared for or by the Council, committee, or panel incident to the meeting, shall be available for public inspection and copying at a single location in the offices of the Council.

(3)(A) Each Council, scientific, and statistical committee, and advisory panel—

(i) shall close any meeting, or portion thereof, that concerns matters or information that bears a national security classification; and

(ii) may close any meeting, or portion thereof, that concerns matters or information that pertains to national security, employment matters, or briefings on litigation in which the Council is interested.

Subparagraphs (D) and (F) of paragraph (2) shall not apply to any meeting or portion thereof that is so closed.

(B) If any meeting or portion is closed, the Council concerned shall notify local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including in that notification the time and place of the meeting. This subparagraph¹ does not require notification regarding any brief closure of a portion of a meeting in order to discuss employment or other internal administrative matters.

(4) Each Council shall establish appropriate procedures applicable to it and to its committee and advisory panels for ensuring the confidentiality of the statistics that may be submitted to it by Federal or State authorities, and may be voluntarily submitted to it by private persons; including, but not limited to, procedures for the restriction of Council employee access and the prevention of conflicts of interest; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 1853(d) of this title, must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics.

(5) Each Council shall specify those procedures that are necessary or appropriate to ensure that the committees and advisory panels established under subsection (g) of this section are involved, on a continuing basis, in the development and amendment of fishery management plans.

(6) At any time when a Council determines it appropriate to consider new information from a State or Federal agency or from a Council advisory body, the Council shall give comparable consideration to new information offered at that time by interested members of the public. Interested parties shall have a reasonable opportunity to respond to new data or information before the Council takes final action on conservation and management measures.

(k) Disclosure of financial interest

(1) For purposes of this subsection, the term “affected individual” means an individual who—

(A) is nominated by the Governor of a State for appointment as a voting member of a Council in accordance with subsection (b)(2) of this section;

(B) is a voting member of a Council appointed under subsection (b)(2) of this section; or

(C) is the executive director of a Council.

(2) Each affected individual must disclose any financial interest held by—

(A) that individual;

(B) the spouse, minor child, or partner of that individual; and

(C) any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee;

in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction.

(3) The disclosure required under paragraph (2) shall be made—

(A) in the case of an affected individual referred to in paragraph (1)(A), before appointment by the Secretary; and

(B) in the case of an affected individual referred to in paragraph (1)(B) or (C), within 45 days of taking office.

(4) An affected individual referred to in paragraph (1)(B) or (C) must update his or her disclosure form at any time any such financial interest is acquired, or substantially changed, by any person referred to in paragraph (2)(A), (B), or (C).

(5) The financial interest disclosures required by this subsection shall—

(A) be made on such forms, in accordance with such procedures, and at such times, as the Secretary shall by regulation prescribe; and

(B) be kept on file, and made available for public inspection at reasonable hours, at the Council offices.

(6) The participation by an affected individual referred to in paragraph (1)(B) or (C) in an action by a Council during any time in which that individual is not in compliance with the regulations prescribed under paragraph (5) may not be treated as cause for the invalidation of that action.

(7) Section 208 of title 18 does not apply to an affected individual referred to in paragraph (1)(B) or (C) during any time in which that individual is in compliance with the regulations prescribed under paragraph (5).

(Pub. L. 94-265, title III, §302, Apr. 13, 1976, 90 Stat. 347; Pub. L. 95-354, §5(1), Aug. 28, 1978, 92

¹ So in original. Probably should be “subparagraph”.

Stat. 521; Pub. L. 96-561, title II, §234, Dec. 22, 1980, 94 Stat. 3299; Pub. L. 97-453, §5, Jan. 12, 1983, 96 Stat. 2484; Pub. L. 99-659, title I, §104(a)(1), (b)-(e)(1), Nov. 14, 1986, 100 Stat. 3709, 3710; Pub. L. 101-627, title I, §§108(a)-(j), 120(c), Nov. 28, 1990, 104 Stat. 4444-4446, 4459; Pub. L. 102-582, title IV, §403, Nov. 2, 1992, 106 Stat. 4909.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (f)(2), (6), (g)(2), and (h), was in the original “this Act”, meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (j)(1), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1992—Subsec. (b)(3). Pub. L. 102-582 substituted “December 31, 1987” for “January 1, 1986”.

1990—Subsec. (a). Pub. L. 101-627, §108(a), inserted “(except as provided in section 1854(f)(3) of this title)” before period at end of first sentence in pars. (1) to (5).

Subsec. (b)(2). Pub. L. 101-627, §108(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“(A) The members of each Council required to be appointed by the Secretary must be individuals who are knowledgeable and experienced with regard to the conservation and management, or the recreational or commercial harvest, of the fishery resources of the geographical area concerned. The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair apportionment, on a rotating or other basis, of the active participants (or their representatives) involved in the fisheries under Council jurisdiction.

“(B) The Secretary shall appoint the members of each Council from a list of individuals submitted by the Governor of each applicable constituent State. A Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the state regarding those individuals. Each such list shall include the names and pertinent biographical data of not less than three individuals for each applicable vacancy. The Secretary shall review each list submitted by a Governor to ascertain if the individuals on the list are qualified for the vacancy on the basis of the required knowledge and experience required by subparagraph (A). If the Secretary determines that any individual is not qualified, he shall notify the appropriate Governor of that determination. The Governor shall then submit a revised list or resubmit the original list with an additional explanation of the qualifications of the individual in question. An individual is not eligible for appointment by the Secretary until that individual complies with the applicable financial disclosure requirements under subsection (k) of this section.

“(C) Whenever the Secretary makes an appointment to a Council, he shall make a public announcement of such appointment not less than 45 days before the first day on which the individual is to take office as a member of the Council.”

Subsec. (b)(3). Pub. L. 101-627, §108(c), inserted at end “No member appointed after January 1, 1986, may serve more than three consecutive terms. Any term completed prior to January 1, 1986, shall not be counted in determining the number of consecutive terms served by any Council member.”

Subsec. (d). Pub. L. 101-627, §108(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as

follows: “The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c)(1)(C) of this section, and the nonvoting member appointed pursuant to subsection (c)(2) of this section shall be reimbursed for actual expenses incurred in the performance of such duties, and other nonvoting members may be reimbursed for actual expenses.”

Subsec. (e)(3). Pub. L. 101-627, §108(e)(1), substituted “at appropriate times and places in any of the constituent States of the Council” for “in the geographical area concerned”.

Subsec. (e)(4). Pub. L. 101-627, §108(e)(2), inserted at end “The regional director of the National Marine Fisheries Service serving on the Council, or the regional director’s designee, shall submit such a statement, which shall be made available to the public upon request, if the regional director disagrees with any such matter.”

Subsec. (g)(3), (4). Pub. L. 101-627, §108(f), added pars. (3) and (4).

Subsec. (h). Pub. L. 101-627, §108(g), inserted “(except as provided in section 1854(f)(3) of this title)” before “within its geographical” in pars. (1) and (5).

Subsec. (i). Pub. L. 101-627, §108(h), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: “Each Council may comment on, or make recommendations concerning, any activity undertaken, or proposed to be undertaken, by any State or Federal agency that, in the view of the Council, may affect the habitat of a fishery resource under its jurisdiction. Within 45 days after receiving such a comment or recommendation from a Council, a Federal agency must provide a detailed response, in writing, to the Council regarding the matter.”

Subsec. (j)(3)(A). Pub. L. 101-627, §108(i)(1), substituted period for semicolon in cl. (ii), and in concluding provisions struck out “and if any meeting or portion is closed, the Council, committee, or panel concerned shall publish notice of the closure in local newspapers in the major fishing ports within its region (and in other major, affected fishing ports), including the time and place of the meeting.” before “Subparagraphs (D) and (F)” and inserted “of paragraph (2)” after “Subparagraphs (D) and (F)”.

Subsec. (j)(3)(B). Pub. L. 101-627, §108(i)(2), added subpar. (B).

Subsec. (j)(4). Pub. L. 101-627, §120(c), substituted “Council employee” for “council employee”.

Subsec. (j)(6). Pub. L. 101-627, §108(j), added par. (6).

1986—Subsec. (b)(2)(A). Pub. L. 99-659, §104(a)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “The members of each Council required to be appointed by the Secretary must be individuals who are knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest of the fishery resources of the geographical area concerned.”

Subsec. (b)(2)(B). Pub. L. 99-659, §104(a)(1)(B), inserted provision that a Governor may not submit the names of individuals to the Secretary for appointment unless the Governor has, to the extent practicable, first consulted with representatives of the commercial and recreational fishing interests of the state regarding those individuals, substituted “knowledge and experience” for “knowledge or experience”, and inserted provision that an individual is not eligible for appointment by the Secretary until that individual complies with applicable financial disclosure requirements under subsec. (k) of this section.

Subsec. (b)(3). Pub. L. 99-659, §104(a)(1)(C), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “Each voting member appointed to a Council by the Secretary in accordance with subsection (b)(2) of this section shall serve for a term of 3 years; except that, with respect to the members initially so ap-

pointed, the Secretary shall designate up to one-third thereof to serve for a term of 1 year, up to one-third thereof to serve for a term of 2 years, and the remaining such members to serve for a term of 3 years.”

Subsec. (i). Pub. L. 99-659, §104(b), added subsec. (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 99-659, §104(b)(1), redesignated former subsec. (i) as (j).

Subsec. (j)(4). Pub. L. 99-659, §104(c), substituted “; except that such procedures, in the case of statistics submitted to the Council by a State or by the Secretary under section 1853(d) of this title, must be consistent with the laws and regulations of that State, or with the procedures of the Secretary, as the case may be, concerning the confidentiality of the statistics” for “; except that such procedures must, in the case of statistics submitted to the Council by a State, be consistent with the laws and regulations of that State concerning the confidentiality of such statistics”.

Subsec. (j)(5). Pub. L. 99-659, §104(d), added par. (5).

Subsec. (k). Pub. L. 99-659, §104(e)(1), added subsec. (k).

1983—Subsec. (a)(1) to (7). Pub. L. 97-453, §5(1)(A), substituted “in accordance with subsection (b)(2)” for “pursuant to subsection (b)(1)(C)” wherever appearing.

Subsec. (a)(8). Pub. L. 97-453, §5(1)(B), substituted provision that the Western Pacific Fishery Management Council shall consist of the States of Hawaii, American Samoa, Guam, and the Northern Mariana Islands and shall have authority over the fisheries in the Pacific Ocean seaward of such States and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area, for provision that the Western Pacific Fishery Management Council would consist of the State of Hawaii, American Samoa, and Guam and have authority over the fisheries in the Pacific Ocean seaward of such States, and provision that the Western Pacific Council shall have 13 voting members, including 8 appointed by the Secretary in accordance with subsection (b)(2) of this section at least one of whom shall be appointed from each of Hawaii, American Samoa, Guam, and the Northern Mariana Islands, for provision that the Western Pacific Council would have 11 voting members, including 7 appointed by the Secretary pursuant to former subsection (b)(1)(C) of this section (at least one of whom would be appointed from each such State).

Subsec. (b)(1)(C). Pub. L. 97-453, §5(2)(A), substituted reference to subsec. (b)(2) of this section for characterization of the members to be appointed as members of a list of qualified individuals submitted by the Governor of each applicable constituent State, that with respect to initial appointments, such Governors submit such lists to the Secretary as soon as practicable, not later than 45 days after April 13, 1976, that “list of qualified individuals” included the names (including pertinent biographical data) of not less than three such individuals for each applicable vacancy, and that “qualified individual” meant an individual knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest, of the fishery resources of the geographical area concerned.

Subsec. (b)(2) to (5). Pub. L. 97-453, §5(2)(B)–(E), added pars. (2) and (5), redesignated existing pars. (2) and (3) as (3) and (4), respectively, and in par. (3), as redesignated, substituted “by the Secretary in accordance with subsection (b)(2) of this section” for “pursuant to paragraph (1)(C)” after “appointed to a Council”.

Subsec. (f)(6). Pub. L. 97-453, §5(3), inserted requirement that the procedures of a Council and associated committees and panels be consistent with the procedural guidelines set forth in subsec. (i)(2).

Subsec. (h)(1). Pub. L. 97-453, §5(4)(A), inserted “that requires conservation and management” after “authority”.

Subsec. (h)(2). Pub. L. 97-453, §5(4)(B), substituted “section 1824(b)(4)(C)” for “section 1824(b)(4)(B)”.

Subsec. (h)(3). Pub. L. 97-453, §5(4)(C), inserted parenthetical definition of “geographical area concerned”.

Subsec. (h)(4). Pub. L. 97-453, §5(4)(D), struck out subpar. (A) which provided for a report, before Feb. 1 of each year, on the Council’s activities during the immediately preceding calendar year, and struck out the subparagraph designators before subpars. (B) and (C).

Subsec. (i). Pub. L. 97-453, §5(5), added subsec. (i).

1980—Subsec. (d). Pub. L. 96-561 inserted provision that other nonvoting members may be reimbursed for actual expenses.

1978—Subsec. (h)(5). Pub. L. 95-354 inserted provisions relating to capacity and extent to which United States fish processors will process harvested fish.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 104(a)(2) of Pub. L. 99-659 provided that: “The amendments made by paragraph (1) [amending this section] shall apply with respect to voting members of regional fishery management councils who are appointed, and to individuals who are nominated for appointment as voting members, on or after the date of the enactment of this Act [Nov. 14, 1986].”

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. Committee on Merchant Marine and Fisheries of House of Representatives treated as referring to Committee on Resources of House of Representatives in case of provisions relating to fisheries, wildlife, international fishing agreements, marine affairs (including coastal zone management) except for measures relating to oil and other pollution of navigable waters, or oceanography by section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

DISCLOSURE OF FINANCIAL INTEREST BY INCUMBENT VOTING MEMBERS AND EXECUTIVE DIRECTORS

Section 104(e)(2) of Pub. L. 99-659 provided that: “For purposes of applying subsection (k) of section 302 of the Act (as added by paragraph (1)) [16 U.S.C. 1852(k)] to voting members and executive directors of regional fishery management councils who are serving in those capacities on the date on which the regulations prescribed to carry out that subsection first take effect, each such member or director must file a disclosure form under that subsection within 45 days after that date.”

DIRECTIONS REGARDING FISHERY MANAGEMENT COUNCIL MEMBERSHIP

Section 113 of Pub. L. 99-659 provided that: “Notwithstanding section 302 of the Act (16 U.S.C. 1852) and effective on and after the date of the enactment of this Act [Nov. 14, 1986], the Secretary shall take action to ensure, to the extent practicable, that those persons dependent for their livelihood upon the fisheries within the respective jurisdictions of the Regional Fishery Management Councils are fairly represented as voting members of the Councils.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971b, 1362, 1379, 1433, 1445a, 1802, 2803, 2804, 3602, 5102, 5601 of this title; title 30 section 1415.

§ 1853. Contents of fishery management plans**(a) Required provisions**

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery, to prevent overfishing, and to protect, restore, and promote the long-term health and stability of the fishery;

(B) described in this subsection or subsection (b) of this section, or both; and

(C) consistent with the national standards, the other provisions of this chapter, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and

(C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

(5) specify the pertinent data which shall be submitted to the Secretary with respect to the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors,¹

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels other-

wise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

(7) include readily available information regarding the significance of habitat to the fishery and assessment as to the effects which changes to that habitat may have upon the fishery;

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 1854(a) of this title (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan; and

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on—

(A) participants in the fisheries affected by the plan or amendment; and

(B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants.

(b) Discretionary provisions

Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—

(A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone or for anadromous species or Continental Shelf fishery resources beyond such zone;

(B) the operator of any such vessel; or

(C) any United States fish processor who first receives fish that are subject to the plan;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this chapter;

(5) incorporate (consistent with the national standards, the other provisions of this chapter,

¹ So in original. The comma probably should be a semicolon.

and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a system for limiting access to the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

- (A) present participation in the fishery,
- (B) historical fishing practices in, and dependence on, the fishery,
- (C) the economics of the fishery,
- (D) the capability of fishing vessels used in the fishery to engage in other fisheries,
- (E) the cultural and social framework relevant to the fishery, and
- (F) any other relevant considerations;

(7) require fish processors who first receive fish that are subject to the plan to submit data (other than economic data) which are necessary for the conservation and management of the fishery;

(8) require that observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized;

(9) assess and specify the effect which the conservation and management measures of the plan will have on the stocks of naturally spawning anadromous fish in the region; and

(10) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(c) Proposed regulations

The proposed regulations which the Council deems necessary or appropriate for purposes of carrying out a plan or amendment to a plan shall be submitted to the Secretary simultaneously with the plan or amendment for action by the Secretary under sections 1854 and 1855 of this title.

(d) Confidentiality of statistics

Any statistic submitted to the Secretary by any person in compliance with any requirement under subsections (a) and (b) of this section shall be confidential and shall not be disclosed; except—

- (1) to Federal employees and Council employees who are responsible for management plan development and monitoring;
- (2) to State employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person; or
- (3) when required by court order.

The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics

in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any statistic submitted in compliance with a requirement under subsection (a) or (b) of this section.

(e) Data collection programs

If a Council determines that additional information and data (other than information and data that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) would be beneficial for the purposes of—

- (1) determining whether a fishery management plan is needed for a fishery; or
- (2) preparing a fishery management plan;

the Council may request that the Secretary implement a data collection program for the fishery which would provide the types of information and data (other than information and data that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations) specified by the Council. The Secretary shall approve such a data collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for a data collection program is not justified, he shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this subsection regarding a Council request shall be made within a reasonable period of time after he receives that request.

(f) Restriction on use of certain data

The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this chapter, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), or the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(Pub. L. 94-265, title III, §303, Apr. 13, 1976, 90 Stat. 351; Pub. L. 95-354, §5(2), (3), Aug. 28, 1978, 92 Stat. 521; Pub. L. 97-453, §6, Jan. 12, 1983, 96 Stat. 2486; Pub. L. 99-659, title I, §§101(c)(2), 105(a)(1), (b), Nov. 14, 1986, 100 Stat. 3707, 3711; Pub. L. 101-627, title I, §109, Nov. 28, 1990, 104 Stat. 4447; Pub. L. 102-251, title III, §301(g), Mar. 9, 1992, 106 Stat. 64.)

AMENDMENT OF SUBSECTION (b)(1)(A)

Pub. L. 102-251, title III, §§301(g), 308, Mar. 9, 1992, 106 Stat. 64, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary,

signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, subsection (b)(1)(A) is amended by inserting “or special areas,” after “exclusive economic zone” and “or areas” after “such zone”.

REFERENCES IN TEXT

The Marine Mammal Protection Act of 1972, referred to in subsec. (f), is Pub. L. 92-522, Oct. 21, 1972, 86 Stat. 1027, as amended, which is classified generally to chapter 31 (§1361 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1361 of this title and Tables.

The Endangered Species Act, referred to in subsec. (f), probably means the Endangered Species Act of 1973, Pub. L. 93-205, Dec. 28, 1973, 87 Stat. 884, as amended, which is classified generally to chapter 35 (§1531 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1531 of this title and Tables.

AMENDMENTS

1990—Subsec. (a)(1)(A). Pub. L. 101-627, §109(a)(1), inserted before semicolon at end “, to prevent overfishing, and to protect, restore, and promote the long-term health and stability of the fishery”.

Subsec. (a)(1)(C). Pub. L. 101-627, §109(a)(2), inserted “regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits),” after “this chapter.”.

Subsec. (a)(6). Pub. L. 101-627, §109(a)(3), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “consider, and may provide for, temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safety of the vessels; and”.

Subsec. (a)(8), (9). Pub. L. 101-627, §109(a)(4), (5), added pars. (8) and (9).

Subsec. (b)(1). Pub. L. 101-627, §109(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;”.

Subsec. (b)(7) to (10). Pub. L. 101-627, §109(b)(2), added pars. (7) and (8) and redesignated former pars. (7) and (8) as (9) and (10), respectively.

Subsec. (d). Pub. L. 101-627, §109(c), in introductory provisions substituted “subsections (a) and (b)” for “subsection (a)(5)”, added par. (2), redesignated former par. (2) as (3), and inserted at end “Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any statistic submitted in compliance with a requirement under subsection (a) or (b) of this section.”

Subsec. (f). Pub. L. 101-627, §109(d), added subsec. (f). 1986—Subsec. (a)(6), (7). Pub. L. 99-659, §105(a)(1), added pars. (6) and (7).

Subsec. (b)(1). Pub. L. 99-659, §101(c)(2), substituted “exclusive economic zone” for “fishery conservation zone”.

Subsec. (d). Pub. L. 99-659, §105(b), amended first sentence generally. Prior to amendment, first sentence read as follows: “Any statistics submitted to the Secretary by any person in compliance with any requirement under subsection (a)(5) of this section shall be confidential and shall not be disclosed except when required under court order.”

1983—Subsec. (b)(7), (8). Pub. L. 97-453, §6(1), added par. (7) and redesignated former par. (7) as (8).

Subsec. (c). Pub. L. 97-453, §6(2), substituted provision that the proposed regulation which the Council deems necessary or appropriate for purposes of carrying out a plan or amendment to a plan shall be submitted to the Secretary simultaneously with the plan or amendment for action by the Secretary under sections 1854 and 1855 of this title, for provision that any Council could prepare any proposed regulations which it deemed necessary and appropriate to carry out any fishery management plan, or any amendment to any fishery management plan, which was prepared by it, and that such proposed regulations would be submitted to the Secretary, together with such plan or amendment, for action by the Secretary pursuant to sections 1854 and 1855 of this title.

Subsec. (e). Pub. L. 97-453, §6(3), added subsec. (e).

1978—Subsec. (a)(4)(C). Pub. L. 95-354, §5(2), added subpar. (C).

Subsec. (a)(5). Pub. L. 95-354, §5(3), inserted provisions relating to estimated processing capacity of, and the actual processing utilized by, United States fish processors.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102-251, set out as a note under section 773 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 105(a)(2) of Pub. L. 99-659 provided that: “The amendments made by paragraph (1) [amending this section] apply to each fishery management plan that—

“(A) is submitted to the Secretary of Commerce for review under section 304(a) of the Act [16 U.S.C. 1854(a)], or that is prepared by the Secretary, after January 1, 1987; or

“(B) is in effect on that date, but compliance with those amendments is not required except in conjunction with the amendment to the plan next occurring after that date.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 773c, 1821, 1852, 1854 of this title.

§ 1854. Action by Secretary**(a) Action by Secretary after receipt of plan**

(1) After the Secretary receives a fishery management plan, or amendment to a plan, which was prepared by a Council, the Secretary shall—

(A) immediately make a preliminary evaluation of the management plan or amendment for purposes of deciding if it is consistent with the national standards and sufficient in scope and substance to warrant review under this subsection and—

(i) if that decision is affirmative, implement subparagraphs (B), (C), and (D) with respect to the plan or amendment, or

(ii) if that decision is negative—

(I) disapprove the plan or amendment, and

(II) notify the Council, in writing, of the disapproval and of those matters specified in subsection (b)(2)(A), (B) and (C) of this section as they relate to the plan or amendment;

(B) immediately commence a review of the management plan or amendment to determine whether it is consistent with the national standards, the other provisions of this chapter, and any other applicable law;

(C) immediately publish in the Federal Register a notice stating that the plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the receipt date; and

(D) by the 15th day after the receipt date—

(i) make such changes in the proposed regulations submitted for the plan or amendment under section 1853(c) of this title as may be necessary for the implementation of the plan, and

(ii) publish such proposed regulations, including any changes made thereto under clause (i), in the Federal Register together with an explanation of those changes which are substantive.

(2) In undertaking the review required under paragraph (1)(B), the Secretary shall—

(A) take into account the data, views, and comments received from interested persons;

(B) consult with the Secretary of State with respect to foreign fishing; and

(C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 1853(a)(6) of this title.

(3)(A) The Secretary shall take action under this section on any fishery management plan or amendment to a plan which the Council characterizes as being a final plan or amendment.

(B) For purposes of this section, the term “receipt date” means the 5th day after the day on which a Council transmits to the Secretary a fishery management plan, or an amendment to a plan, that it characterizes as a final plan or amendment.

(b) Review by Secretary

(1) A plan or amendment shall take effect and be implemented in accordance with section 1855(a) of this title if—

(A) the Secretary does not notify the Council in writing of—

(i) his disapproval under subsection (a)(1)(A)(ii) of this section, or

(ii) his disapproval, or partial disapproval, under paragraph (2), of the plan or amendment before the close of the 95th day after the receipt date; or

(B) at any time subsequent to the 60th day after the receipt date and before such 95th day, the Secretary notifies the Council in writing that he does not intend to disapprove, or partially disapprove, the plan or amendment.

(2) If after review under subsection (a) of this section the Secretary determines that the plan or amendment is not consistent with the criteria set forth in paragraph (1)(B) of that subsection, the Secretary shall notify the Council in writing of his disapproval or partial disapproval of the plan or amendment. Such notice shall specify—

(A) the applicable law with which the plan or amendment is inconsistent;

(B) the nature of such inconsistency; and

(C) recommendations concerning the actions that could be taken by the Council to conform such plan or amendment to the requirements of applicable law.

(3)(A) If the Secretary disapproves a proposed plan or amendment under subsection (a)(1)(A)(ii) of this section, or disapproves, or partially disapproves, a proposed plan or amendment under paragraph (2), the Council may submit a revised plan or amendment, accompanied by appropriately revised proposed regulations, to the Secretary.

(B) After the Secretary receives a revised plan or amendment under subparagraph (A) or (C)(ii), the Secretary shall immediately—

(i) commence a review of the plan or amendment to determine whether it complies with the criteria set forth in subsection (a)(1)(B) of this section;

(ii) publish in the Federal Register a notice stating that the revised plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 30-day period beginning on the date (hereinafter in this paragraph referred to as the “revised receipt date”) the plan or amendment was submitted to the Secretary under subparagraph (A) or (C)(ii); and

(iii) review the revised proposed regulations, if any, submitted by the Council and make such changes to them as may be necessary for the implementation of the plan, and thereafter publish such revised proposed regulations (as so changed) in the Federal Register together with an explanation of each of such changes that is substantive.

(C)(i) Before the close of the 60th day after the revised receipt date, the Secretary, after taking into account any data, views, or comments received under subparagraph (B)(ii), shall complete the review required under subparagraph (B)(i) and determine whether the plan or amendment complies with the criteria set forth in subsection (a)(1)(B) of this section. If the Secretary determines that a plan or amendment is not in compliance with such criteria, he shall immediately notify the Council of his disapproval of the plan or amendment.

(ii) After notifying a Council of disapproval under clause (i), the Secretary shall promptly provide to the Council a written statement of the reasons on which the disapproval was based and advise the Council that it may submit a further revised plan or amendment, together with appropriately revised proposed regulations, for review and determination under this paragraph.

(D) A revised plan or amendment shall take effect and be implemented in accordance with section 1855(a) of this title if the Secretary does not notify the Council, in writing, by the close of the 60th day after the revised receipt date of his disapproval of the plan or amendment.

(c) Preparation by Secretary

(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or

any amendment to any such plan, in accordance with the national standards, the other provisions of this chapter, and any other applicable law, if—

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management; or

(B) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment, as the case may be.

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea. The Secretary shall also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph.

(2)(A) Whenever, under paragraph (1), the Secretary prepares a fishery management plan or amendment, the Secretary shall immediately—

(i) submit such plan or amendment, and proposed regulations to implement such plan or amendment, to the appropriate Council for consideration and comment;

(ii) publish in the Federal Register a notice stating that the plan or amendment is available and that written data, views, or comments of interested persons on the plan or amendment may be submitted to the Secretary during the 60-day period beginning on the date the plan or amendment was submitted under clause (i); and

(iii) by the 15th day after the date of submission under clause (i), submit for publication in the Federal Register the proposed regulations to implement the plan or amendment.

(B) The appropriate Council must submit its comments and recommendations, if any, regarding the plan or amendment to the Secretary before the close of the 60-day period referred to in subparagraph (A)(ii). After the close of such 60-day period, the Secretary, after taking into account any such comments and recommendations, as well as any views, data, or comments submitted under subparagraph (A)(ii), may implement such plan or amendment under section 1855(a) of this title.

(3) Notwithstanding paragraph (1), the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system described in section 1853(b)(6) of this title, unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(d) Establishment of fees

The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 1853(b)(1) of this title. The Secretary may enter into a coopera-

tive agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.

(e) Fisheries research

(1) The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this chapter. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management and on the economics of the fisheries.

(2) Within one year after November 28, 1990, and at least every three years thereafter, the Secretary shall develop and publish in the Federal Register a strategic plan for fisheries research for the five years immediately following such publication. The plan shall—

(A) identify and describe a comprehensive program with a limited number of priority objectives for research in each of the areas specified in paragraph (3);

(B) indicate the goals and timetables for the program described in subparagraph (A); and

(C) provide a role for affected commercial fishermen in such research, including involvement in field testing.

(3) The areas of research referred to in paragraph (2) are as follows:

(A) Research to support fishery conservation and management, including research on the economics of fisheries and biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish populations, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

(B) Conservation engineering research, including the study of fish behavior and the development and testing of new gear technology and fishing techniques to minimize the harvest of nontarget species and promote efficient harvest of target species.

(C) Information management research, including the development of a fishery information base and an information management system that will permit the full use of data in the support of effective fishery conservation and management.

(4) In developing the plan required under paragraph (2), the Secretary shall consult with relevant Federal agencies, scientific and technical experts, and other interested persons, public and private, and shall publish a proposed plan in the Federal Register for the purpose of receiving public comment on the plan. The Secretary shall ensure that affected commercial fishermen are actively involved in the development of the portion of the plan pertaining to conservation engineering research. Upon final publication in the Federal Register, the plan shall be submitted by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

(f) Fisheries under authority of more than one Council

(1) Except as provided in paragraph (3), if any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

(A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

(3)(A) The Secretary shall have authority over any highly migratory species fishery that is within the geographical area of authority of more than one of the following Councils: New England Council, Mid-Atlantic Council, South Atlantic Council, Gulf Council, and Caribbean Council.

(B) In accordance with the provisions of this chapter and any other applicable law, the Secretary shall—

(i) identify research and information priorities, including observer requirements and necessary data collection and analysis for the conservation and management of highly migratory species;

(ii) prepare and amend fishery management plans with respect to highly migratory species fisheries to which this paragraph applies; and

(iii) diligently pursue, through international entities (such as the International Commission for the Conservation of Atlantic Tunas), international fishery management measures with respect to fishing for highly migratory species.

(C) In preparing or amending any fishery management plan under this paragraph, the Secretary shall—

(i) conduct public hearings, at appropriate times and in appropriate locations in the geographical areas concerned, so as to allow interested persons an opportunity to be heard in the preparation and amendment of the plan;

(ii) consult with and consider the comments and views of commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species;

(iii) consult with and consider the comments and views of affected Councils;

(iv) evaluate the likely effects, if any, of conservation and management measures on participants in the fisheries affected by the plan and minimize, to the extent practicable, any disadvantage to United States fishermen in relation to foreign competitors; and

(v) review, on a continuing basis (and promptly whenever a recommendation pertaining to fishing for highly migratory species has been made under a relevant international fishery agreement), and revise as appropriate, the conservation and management measures included in the plan.

(D) Conservation and management measures contained in any fishery management plan under this paragraph shall—

(i) take into consideration traditional fishing patterns of fishing vessels of the United States and the operating requirements of the fisheries;

(ii) be fair and equitable in allocating fishing privileges among United States fishermen and not have economic allocation as the sole purpose; and

(iii) promote international conservation.

(E) With respect to a highly migratory species for which the United States is authorized to harvest an allocation or quota under a relevant international fishery agreement, the Secretary shall provide fishing vessels of the United States with a reasonable opportunity to harvest such allocation or quota.

(F) In implementing the provisions of this paragraph, the Secretary shall consult with—

(i) the Secretary of State;

(ii) commissioners and advisory groups appointed under Acts implementing relevant international fishery agreements pertaining to highly migratory species; and

(iii) appropriate Councils.

(g) Incidental harvest research

(1) Within 9 months after November 28, 1990, the Secretary shall, after consultation with the Gulf of Mexico Fishery Management Council and South Atlantic Fishery Management Council, establish by regulation a 3-year program to assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery within the authority of such Councils.

(2) The program established pursuant to paragraph (1) shall provide for the identification of stocks of fish which are subject to significant incidental harvest in the course of normal shrimp trawl fishing activity.

(3) For stocks of fish identified pursuant to paragraph (2), with priority given to stocks which (based upon the best available scientific information) are considered to be overfished, the Secretary shall conduct—

(A) a program to collect and evaluate data on the nature and extent (including the spatial and temporal distribution) of incidental mortality of such stocks as a direct result of shrimp trawl fishing activities;

(B) an assessment of the status and condition of such stocks, including collection of information which would allow the estimation of life history parameters with sufficient accuracy and precision to support sound scientific evaluation of the effects of various management alternatives on the status of such stocks; and

(C) a program of data collection and evaluation for such stocks on the magnitude and distribution of fishing mortality and fishing effort by sources of fishing mortality other than shrimp trawl fishing activity.

(4) The Secretary shall, in cooperation with affected interests, commence a program to design, and evaluate the efficacy of, technological devices and other changes in fishing technology for the reduction of incidental mortality of non-

target fishery resources in the course of shrimp trawl fishing activity. Such program shall take into account local conditions and include evaluation of any reduction in incidental mortality, as well as any reduction or increase in the retention of shrimp in the course of normal fishing activity.

(5) The Secretary shall, upon completion of the programs required by this subsection, submit a detailed report on the results of such programs to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives.

(6)(A) Except as provided in this paragraph, the Secretary may not implement any measures under this chapter to reduce incidental mortality of nontarget fishery resources in the course of shrimp trawl fishing which would restrict the period during which shrimp are harvested or would require the use of any technological device or other change in fishing technology.

(B) The prohibition contained in subparagraph (A) shall cease on April 1, 1994.

(C) This paragraph does not apply to any law or regulation in effect on November 28, 1990, nor does it limit in any way the Secretary's authority to take action, including any limitation on entry permitted by this chapter, for the conservation and management of the shrimp fishery resource.

(Pub. L. 94-265, title III, §304, Apr. 13, 1976, 90 Stat. 352; Pub. L. 97-453, §7(a), Jan. 12, 1983, 96 Stat. 2487; Pub. L. 99-659, title I, §106, Nov. 14, 1986, 100 Stat. 3712; Pub. L. 101-627, title I, §§110(a), (b)(1), (c), 111(a)(2), 120(d), Nov. 28, 1990, 104 Stat. 4449-4452, 4459; Pub. L. 102-567, title III, §303, Oct. 29, 1992, 106 Stat. 4283; Pub. L. 103-206, title VII, §702, Dec. 20, 1993, 107 Stat. 2446.)

AMENDMENTS

1993—Subsec. (g)(6)(B). Pub. L. 103-206 substituted “April 1, 1994” for “January 1, 1994”.

1992—Subsec. (e)(1). Pub. L. 102-567 added par. (1). Former par. (1) redesignated (2).

Subsec. (e)(2). Pub. L. 102-567 redesignated par. (1) as (2) and substituted “(3)” for “(2)” in subpar. (A). Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 102-567 redesignated par. (2) as (3) and substituted “(2)” for “(1)” in introductory provisions. Former par. (3) redesignated (4).

Subsec. (e)(4). Pub. L. 102-567 redesignated par. (3) as (4) and substituted “(2)” for “(1)”.

1990—Subsec. (b)(1), (3)(D). Pub. L. 101-627, §111(a)(2)(A), (B), substituted “section 1855(a)” for “section 1855(c)”.

Subsec. (c)(2)(B). Pub. L. 101-627, §120(d), substituted “appropriate Council” for “appropriate council”.

Pub. L. 101-627, §111(a)(2)(C), substituted “section 1855(a)” for “section 1855(c)”.

Subsec. (e). Pub. L. 101-627, §110(a), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “The Secretary shall initiate and maintain, in cooperation with the Councils, a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this chapter. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management and on the economics of the fisheries, including, but not limited to, biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

The Secretary shall annually review and update the comprehensive program and make the results of the review and update available to the Councils.”

Subsec. (f). Pub. L. 101-627, §110(b)(1), in heading substituted “Fisheries under authority of more than one Council” for “Miscellaneous duties”, in par. (1) substituted “Except as provided in paragraph (3), if” for “If”, and added par. (3).

Subsec. (g). Pub. L. 101-627, §110(c), added subsec. (g).

1986—Subsec. (a)(1). Pub. L. 99-659, §106(1)(A), struck out “(the date of receipt of which is hereafter in this section referred to as the ‘receipt date’)” after “by a Council” in introductory provisions.

Subsec. (a)(1)(A), (B). Pub. L. 99-659, §106(1)(B), (C), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

Subsec. (a)(1)(C). Pub. L. 99-659, §106(1)(B), (D), redesignated former subpar. (B) as (C) and substituted “60-day” for “75-day”. Former subpar. (C) redesignated (D).

Subsec. (a)(1)(D). Pub. L. 99-659, §106(1)(B), (E), redesignated former subpar. (C) as (D) and substituted “15th day” for “30th day”.

Subsec. (a)(2). Pub. L. 99-659, §106(1)(F), substituted “paragraph (1)(B)” for “paragraph (1)(A)” in introductory provisions and inserted “and to fishery access adjustments referred to in section 1853(a)(6) of this title” in subpar. (C).

Subsec. (a)(3). Pub. L. 99-659, §106(1)(G), added par. (3).

Subsec. (b)(1)(A). Pub. L. 99-659, §106(2)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the Secretary does not notify the Council in writing of his disapproval, or partial disapproval, under paragraph (2), of the plan or amendment before the close of the 95th day after the receipt date; or”.

Subsec. (b)(1)(B). Pub. L. 99-659, §106(2)(B), substituted “60th day” for “75th day”.

Subsec. (b)(2). Pub. L. 99-659, §106(2)(C), substituted “paragraph (1)(B)” for “paragraph (1)(A)” in introductory provisions.

Subsec. (b)(3)(A). Pub. L. 99-659, §106(2)(D)(i), inserted “disapproves a proposed plan or amendment under subsection (a)(1)(A)(ii) of this section, or”.

Subsec. (b)(3)(B)(i), (C)(i). Pub. L. 99-659, §106(2)(D)(ii), substituted “subsection (a)(1)(B)” for “subsection (a)(1)(A)”.

Subsec. (c)(2)(A)(ii). Pub. L. 99-659, §106(3)(A), substituted “60-day” for “75-day”.

Subsec. (c)(2)(A)(iii). Pub. L. 99-659, §106(3)(B), substituted “15th day” for “30th day”.

Subsec. (c)(2)(B). Pub. L. 99-659, §106(3)(C), substituted “60-day” for “75-day” in two places.

Subsec. (e). Pub. L. 99-659, §106(4), inserted “, in cooperation with the Councils,” “and on the economics of the fisheries”, and “The Secretary shall annually review and update the comprehensive program and make the results of the review and update available to the Councils.”

1983—Subsec. (a). Pub. L. 97-453, §7(a)(1), amended subsec. (a) generally, which had provided that within 60 days after the Secretary received any fishery management plan, or any amendment to any such plan, which was prepared by any Council, the Secretary was to review such plan or amendment pursuant to subsection (b) of this section, notify such Council in writing of his approval, disapproval, or partial disapproval of such plan or amendment, and that in the case of disapproval or partial disapproval, the Secretary was to include in such notification a statement and explanation of the Secretary's objections and the reasons therefor, suggestions for improvement, a request to such Council to change such plan or amendment to satisfy the objections, and a request to resubmit the plan or amendment, as so modified, to the Secretary within 45 days after the date on which the Council received such notification.

Subsec. (b). Pub. L. 97-453, §7(a)(1), amended subsec. (b) generally, which had provided that the Secretary was to review any fishery management plan, and any amendment to any such plan, prepared by any Council

and submitted to him to determine whether it was consistent with the national standards, the other provisions of this chapter, and any other applicable law, and that in carrying out such review, the Secretary was to consult with the Secretary of State with respect to foreign fishing, and the Secretary of the department in which the Coast Guard was operating with respect to enforcement at sea.

Subsec. (c)(1). Pub. L. 97-453, §7(a)(2)(A), in subpar. (B) substituted “or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment, as the case may be” for “and the Council involved fails to change such plan or amendment in accordance with the notification made under subsection (a)(2) of this section”, and added to the provisions following subpar. (B) a requirement that the Secretary also prepare such proposed regulations as he deems necessary or appropriate to carry out each plan or amendment prepared by him under this paragraph.

Subsec. (c)(2). Pub. L. 97-453, §7(a)(2)(B), amended par. (2) generally, which had provided that whenever, pursuant to paragraph (1), the Secretary prepared a fishery management plan or amendment, the Secretary was to promptly transmit such plan or amendment to the appropriate Council for consideration and comment, that within 45 days after the date of receipt of such plan or amendment, the appropriate Council could recommend, to the Secretary, changes in such plan or amendment, consistent with the national standards, the other provisions of this chapter, and any other applicable law, and that after the expiration of such 45-day period, the Secretary could implement such plan or amendment pursuant to section 1855 of this title.

Subsec. (d). Pub. L. 97-453, §7(a)(3), inserted provisions relating to agreements with the States for the administration of the permit system and the permissible accrual to the States of fees collected under the system.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 7(b) of Pub. L. 97-453 provided that: “The amendments made by subsection (a) [amending this section] shall only apply with respect to fishery management plans and amendments thereto that are initially submitted to the Secretary of Commerce on or after the date of the enactment of this Act [Jan. 12, 1983] for action under section 304 [this section].”

ABOLITION OF HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES

Committee on Merchant Marine and Fisheries of House of Representatives abolished and its jurisdiction transferred by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995. For treatment of references to Committee on Merchant Marine and Fisheries, see section 1(b)(3) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

INTERIM MANAGEMENT OF HIGHLY MIGRATORY SPECIES FISHERIES

Section 108(k) of Pub. L. 101-627 provided that: “Notwithstanding the amendments made by subsections (a) and (g) [amending section 1852 of this title], any fishery management plan or amendment which—

“(1) addresses a highly migratory species fishery to which section 304(f)(3) of the Magnuson Fishery Conservation and Management Act [16 U.S.C. 1854(f)(3)] (as amended by this Act) applies,

“(2) was prepared by one or more Regional Fishery Management Councils, and

“(3) was in force and effect on January 1, 1990, shall remain in force and effect until superseded by a fishery management plan prepared by the Secretary, and regulations implementing that plan.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1852, 1853, 1855 of this title.

§ 1855. Implementation of fishery management plans

(a) Implementation

The Secretary shall promulgate each regulation that is necessary to carry out a plan or amendment—

(1) within 110 days after the plan or amendment was received by him for action under section 1854(a) of this title, if such plan or amendment takes effect under section 1854(b)(1) of this title;

(2) within 75 days after a revised plan or amendment was received by him under section 1854(b) of this title, if such plan or amendment takes effect under paragraph (3)(D) of such section; or

(3) within such time as he deems appropriate in the case of a plan or amendment prepared by him under section 1854(c) or (f)(3) of this title.

(b) Judicial review

(1) Regulations promulgated by the Secretary under this chapter and actions described in paragraph (2) shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated or the action is published in the Federal Register, as applicable; except that—

(A) section 705 of such title is not applicable, and

(B) the appropriate court shall only set aside any such regulation or action on a ground specified in section 706(2)(A), (B), (C), or (D) of such title.

(2) The actions referred to in paragraph (1) are actions that are taken by the Secretary under regulations which implement a fishery management plan, including but not limited to actions that establish the date of closure of a fishery to commercial or recreational fishing.

(3)(A) Notwithstanding any other provision of law, the Secretary shall file a response to any petition filed in accordance with paragraph (1), not later than 45 days after the date the Secretary is served with that petition, except that the appropriate court may extend the period for filing such a response upon a showing by the Secretary of good cause for that extension.

(B) A response of the Secretary under this paragraph shall include a copy of the administrative record for the regulations that are the subject of the petition.

(4) Upon a motion by the person who files a petition under this subsection, the appropriate court shall assign the matter for hearing at the earliest possible date and shall expedite the matter in every possible way.

(c) Emergency actions

(1) If the Secretary finds that an emergency exists involving any fishery, he may promulgate emergency regulations necessary to address the emergency, without regard to whether a fishery management plan exists for such fishery.

(2) If a Council finds that an emergency exists involving any fishery within its jurisdiction, whether or not a fishery management plan exists for such fishery—

(A) the Secretary shall promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by unanimous vote of the members who are voting members, requests the taking of such action; and

(B) the Secretary may promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by less than a unanimous vote, requests the taking of such action.

(3) Any emergency regulation which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection—

(A) shall be published in the Federal Register together with the reasons therefor;

(B) shall remain in effect for not more than 90 days after the date of such publication, except that any such regulation may, by agreement of the Secretary and the Council, be promulgated for one additional period of not more than 90 days; and

(C) may be terminated by the Secretary at an earlier date by publication in the Federal Register of a notice of termination, except for emergency regulations promulgated under paragraph (2) in which case such early termination may be made only upon the agreement of the Secretary and the Council concerned.

(d) Responsibility of Secretary

The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this chapter. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, as may be necessary to discharge such responsibility or to carry out any other provision of this chapter.

(e) Effect of certain laws on certain time requirements

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.),¹ the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and Executive Order Numbered 12291, dated February 17, 1981, shall be complied with within the time limitations specified in subsection (c) of this section or section 1854(a) and (b) of this title as they apply to the functions of the Secretary under such provisions.

(Pub. L. 94-265, title III, §305, Apr. 13, 1976, 90 Stat. 354; Pub. L. 96-561, title II, §235, Dec. 22, 1980, 94 Stat. 3299; Pub. L. 97-453, §8, Jan. 12, 1983, 96 Stat. 2490; Pub. L. 101-627, title I, §§110(b)(2), 111(a)(1), (b), Nov. 28, 1990, 104 Stat. 4451, 4452.)

REFERENCES IN TEXT

The Paperwork Reduction Act of 1980, referred to in subsec. (e), is Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104-13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see

Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.), referred to in subsec. (e), is Pub. L. 96-354, Sept. 19, 1980, 94 Stat. 1164, which is classified generally to chapter 6 (§601 et seq.) of Title 5, Government Organization and Employees. For complete classification of the Act to the Code, see Short Title note set out under section 601 of Title 5 and Tables.

Executive Order Numbered 12291, referred to in subsec. (e), was formerly set out as a note under section 601 of Title 5 and was revoked by Ex. Ord. No. 12866, §11, Sept. 30, 1993, 58 F.R. 51735.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-627, §110(b)(2), 111(a)(1)(A), redesignated subsec. (c) as (a) and substituted “section 1854(c) or (f)(3)” for “section 1854(c)”.

Subsec. (b). Pub. L. 101-627, §111(a)(1)(A), (b), redesignated subsec. (d) as (b) and amended it generally. Prior to amendment, subsec. (b) read as follows: “Regulations promulgated by the Secretary under this chapter shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated; except that (1) section 705 of such title is not applicable, and (2) the appropriate court shall only set aside any such regulation on a ground specified in section 706(2)(A), (B), (C), or (D) of such title.”

Subsecs. (c) to (e), (g), (h). Pub. L. 101-627, §111(a)(1), redesignated subsecs. (e), (g), and (h) as (c), (d), and (e), respectively.

1983—Subsec. (a). Pub. L. 97-453, §8(1), struck out subsec. (a) which had provided that, as soon as practicable after the Secretary approved pursuant to section 1854(a) and (b) of this title any fishery management plan or amendment or prepared pursuant to section 1854(c) of this title any fishery management plan or amendment, the Secretary was to publish a notice of availability of such plan or amendment and any regulations which he proposed to promulgate to implement such plan or amendment in the Federal Register, and that interested persons were to be afforded a period of not less than 45 days after such publication within which to submit in writing data, views, or comments on the plan or amendment, and on the proposed regulations.

Subsec. (b). Pub. L. 97-453, §8(1), struck out subsec. (b) which had provided that the Secretary might schedule a hearing, in accordance with section 553 of title 5, on any fishery management plan, any amendment to any such plan, any regulations to implement any such plan or amendment and that if any such hearing was scheduled, the Secretary could postpone the effective date of the regulations proposed to implement such plan or amendment, or take such other action as he deemed appropriate to preserve the rights or status of any person, pending its outcome.

Subsec. (c). Pub. L. 97-453, §8(2), substituted provision that the Secretary shall promulgate each regulation that is necessary to carry out a plan or amendment within 110 days after the plan or amendment was received by him for action under section 1854(a) of this title if such plan or amendment takes effect under section 1854(b)(1) of this title, within 75 days after a revised plan or amendment was received by him under section 1854(b) of this title if such plan or amendment takes effect under paragraph (3)(D) of such section, or within such time as he deems appropriate in the case of a plan or amendment prepared by him under section 1854(c) of this title, for provision that the Secretary promulgate regulations to implement any fishery management plan or any amendment to any such plan after consideration of all relevant matters presented to him during the 45-day period referred to in former subsection (a) of this section and produced in any hearing held under former subsection (b) of this section if he found the plan or amendment consistent with the national standards, the other provisions of this chapter,

¹ See References in Text note below.

and any other applicable law, and that to the extent practicable, such regulation be put into effect in a manner not disruptive of the regular fishing season for any fishery.

Subsec. (e). Pub. L. 97-453, §8(3), substituted provision that if the Secretary finds that an emergency exists involving any fishery, he may promulgate emergency regulations necessary to address the emergency, without regard to whether a fishery management plan exists for such fishery, that if a Council finds that an emergency exists involving any fishery within its jurisdiction, whether or not a fishery management plan exists for such fishery, the Secretary shall promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by unanimous vote of the members who are voting members, requests the taking of such action, and the Secretary may promulgate emergency regulations under paragraph (1) to address the emergency if the Council, by less than a unanimous vote, requests the taking of such action, for provision that if the Secretary found that an emergency involving any fishery resources existed, he could promulgate emergency regulations, without regard to former subsections (a) and (c) of this section, to implement any fishery management plan, if required, or promulgate emergency regulations to amend any regulation implementing any existing fishery management plan, to the extent required by such emergency, lengthened from 45 days to 90 days the maximum period that emergency regulations may remain in effect after publication in the Federal Register and the maximum additional period for which such regulations may be promulgated, and inserted a provision that emergency regulations promulgated under par. (2) may only be terminated early upon the agreement of the Secretary and the Council concerned.

Subsec. (f). Pub. L. 97-453, §8(4), struck out subsec. (f) which had directed the Secretary to report to the Congress and the President, not later than March 1 of each year, on all activities of the Councils and the Secretary with respect to fishery management plans, regulations to implement such plans, and all other activities relating to the conservation and management of fishery resources undertaken under this chapter during the preceding calendar year.

Subsec. (h). Pub. L. 97-453, §8(5), added subsec. (h).

1980—Subsec. (a). Pub. L. 96-561 inserted “a notice of availability of” after “Federal Register (A)”.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1821, 1853, 1854, 5503 of this title.

§ 1856. State jurisdiction

(a) In general

(1) Except as provided in subsection (b) of this section, nothing in this chapter shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries.

(2) For the purposes of this chapter, except as provided in subsection (b) of this section, the jurisdiction and authority of a State shall extend—

(A) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party;

(B) with respect to the body of water commonly known as Nantucket Sound, to the pocket of water west of the seventieth meridian west of Greenwich; and

(C) to the waters of southeastern Alaska (for the purpose of regulating fishing for other than any species of crab) that are—

(i) north of the line representing the international boundary at Dixon Entrance and the westward extension of that line; east of 138 degrees west longitude; and not more than three nautical miles seaward from the coast, from the lines extending from headland to headland across all bays, inlets, straits, passes, sounds, and entrances, and from any island or group of islands, including the islands of the Alexander Archipelago (except Forrester Island); or

(ii) between the islands referred to in clause (i) (except Forrester Island) and the mainland.

(3) Except as otherwise provided by paragraph (2), a State may not directly or indirectly regulate any fishing vessel outside its boundaries, unless the vessel is registered under the law of that State.

(b) Exception

(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, that—

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this chapter, is engaged in predominantly within the exclusive economic zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

(c) Exception regarding foreign fish processing in internal waters

(1) A foreign fishing vessel may engage in fish processing within the internal waters of a State if, and only if—

(A) the vessel is qualified for purposes of this paragraph pursuant to paragraph (4)(C); and

(B) the owner or operator of the vessel applies to the Governor of the State for, and (subject to paragraph (2)) is granted, permission for the vessel to engage in such processing and the application specifies the species to be processed.

(2) The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)—

(A) for a fishery which occurs in the waters of more than one State or in the exclusive economic zone, except after—

(i) consulting with the appropriate Council and Marine Fisheries Commission, and

(ii) considering any comments received from the Governor of any other State where the fishery occurs; and

(B) if the Governor determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.

(3) Nothing in this subsection may be construed as relieving a foreign fishing vessel from the duty to comply with all applicable Federal and State laws while operating within the internal waters of a State incident to permission obtained under paragraph (1)(B).

(4) For purposes of this subsection—

(A) The term “fish processing” includes, in addition to processing, the performance of any other activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, or transportation.

(B) The phrase “internal waters of a State” means all waters within the boundaries of a State except those seaward of the baseline from which the territorial sea is measured.

(C) A foreign fishing vessel shall be treated as qualified for purposes of paragraph (1) if the foreign nation under which it is flagged will be a party to (i) a governing international fishery agreement or (ii) a treaty described in section 1821(b) of this title during the time the vessel will engage in the fish processing for which permission is sought under paragraph (1)(B).

(Pub. L. 94-265, title III, § 306, Apr. 13, 1976, 90 Stat. 355; Pub. L. 97-191, § 1, June 1, 1982, 96 Stat. 107; Pub. L. 97-453, § 9, Jan. 12, 1983, 96 Stat. 2491; Pub. L. 98-623, title IV, § 404(4), Nov. 8, 1984, 98 Stat. 3408; Pub. L. 99-659, title I, § 101(c)(2), Nov. 14, 1986, 100 Stat. 3707; Pub. L. 101-627, title I, § 112, Nov. 28, 1990, 104 Stat. 4453.)

AMENDMENTS

1990—Subsec. (c)(1)(B). Pub. L. 101-627, § 112(1), inserted before period at end “and the application specifies the species to be processed”.

Subsec. (c)(2). Pub. L. 101-627, § 112(2), added par. (2) and struck out former par. (2) which read as follows: “The Governor of a State may not grant permission for a foreign fishing vessel to engage in fish processing under paragraph (1)(B) if he determines that fish processors within the State have adequate capacity, and will utilize such capacity, to process all of the United States harvested fish from the fishery concerned that are landed in the State.”

1986—Subsec. (b)(1)(A). Pub. L. 99-659 substituted “exclusive economic zone” for “fishery conservation zone”.

1984—Subsec. (a). Pub. L. 98-623 designated existing provisions as pars. (1) to (3), in par. (2), as so designated, redesignated cls. (1) and (2) as subpars. (A) and (B), respectively, and added subpar. (C), and in par. (3), as so designated, inserted exception relating to par. (2).

1983—Subsec. (a). Pub. L. 97-453 inserted provision delineating the jurisdiction and authority of a State over waters adjacent to the State and over Nantucket Sound.

1982—Subsec. (c). Pub. L. 97-191 added subsec. (c).

EFFECTIVE DATE OF 1982 AMENDMENT

Section 3 of Pub. L. 97-191 provided that: “This Act [amending this section and section 1857 of this title] shall take effect on June 1, 1982.”

FOREIGN FISH PROCESSING IN NORTON SOUND

Pub. L. 99-509, title V, § 5004, Oct. 21, 1986, 100 Stat. 1912, provided that: “For purposes of processing pink salmon within the internal waters of the State of Alaska, the geographic area bounded on the north by a parallel of latitude of 64 degrees, 23 minutes, on the south by a parallel of latitude of 63 degrees, 51 minutes, on the east by the baseline from which the territorial sea is measured, and on the west by the outer limit of the territorial sea, shall be considered to be internal waters of the State of Alaska for the purposes of section 306(c)(4)(B) of the Fishery Conservation and Management Act (16 U.S.C. 1856(c)(4)(B)) until September 30, 1993.”

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1857 of this title.

§ 1857. Prohibited acts

It is unlawful—

(1) for any person—

(A) to violate any provision of this chapter or any regulation or permit issued pursuant to this chapter;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this chapter;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 1821(c) of this title;

(D) to refuse to permit any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title) to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this chapter or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

(F) to resist a lawful arrest for any act prohibited by this section;

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this chapter or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(H) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section;

(I) to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing

vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this chapter;

(J) to ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live lobster of the species *Homarus americanus*, that—

(i) is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan, as implemented by regulations published in part 649 of title 50, Code of Federal Regulations, or any successor to that plan, implemented under this subchapter;

(ii) is bearing eggs attached to its abdominal appendages; or

(iii) bears evidence of the forcible removal of extruded eggs from its abdominal appendages;

(K) to knowingly steal, or without authorization, to remove, damage, or tamper with—

(i) fishing gear owned by another person, which is located in the exclusive economic zone, or

(ii) fish contained in such fishing gear,

or to attempt to do so;

(L) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any observer on a vessel under this chapter;

(M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation; or

(N) to strip pollock of its roe and discard the flesh of the pollock.

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage—

(A) in fishing within the boundaries of any State, except recreational fishing permitted under section 1821(j) of this title;

(B) in fishing, except recreational fishing permitted under section 1821(j) of this title, within the exclusive economic zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 1824(b) or (c) of this title; or

(C) except as permitted under section 1856(c) of this title, in fish processing (as defined in paragraph (4)(A) of such section) within the internal waters of a State (as defined in paragraph (4)(B) of such section);

(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer directly or indirectly, or attempt to so transfer, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone, unless the foreign fishing vessel has been issued a permit under section 1824 of this title which authorizes the

receipt by such vessel of United States harvested fish of the species concerned;

(4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone, if—

(A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available, for fishing; or

(B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unusable for fishing;

unless such vessel is authorized to engage in fishing in the area in which the vessel is operating; and

(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fishing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 1823 of this title, or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.

(Pub. L. 94-265, title III, §307, Apr. 13, 1976, 90 Stat. 355; Pub. L. 95-354, §5(4), Aug. 28, 1978, 92 Stat. 521; Pub. L. 97-191, §2, June 1, 1982, 96 Stat. 107; Pub. L. 97-453, §15(b), Jan. 12, 1983, 96 Stat. 2492; Pub. L. 99-659, title I, §§101(c)(2), 107(a), Nov. 14, 1986, 100 Stat. 3707, 3713; Pub. L. 100-629, §4, Nov. 7, 1988, 102 Stat. 3286; Pub. L. 101-224, §8, Dec. 12, 1989, 103 Stat. 1907; Pub. L. 101-627, title I, §113, Nov. 28, 1990, 104 Stat. 4453; Pub. L. 102-251, title III, §301(h), Mar. 9, 1992, 106 Stat. 64.)

AMENDMENT OF SECTION

Pub. L. 102-251, title III, §§301(h), 308, Mar. 9, 1992, 106 Stat. 64, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, this section is amended:

(1) in paragraph (1)(K), by inserting “or special areas” immediately after “exclusive economic zone”;

(2) in paragraph (2)(B), (A) by inserting “within the special areas,” immediately after “exclusive economic zone,” and (B) by inserting “or areas” immediately after “such zone”;

(3) in paragraph (3), by inserting “or special areas” immediately after “exclusive economic zone”; and

(4) in paragraph (4), by inserting “or special areas” immediately after “exclusive economic zone”.

AMENDMENTS

1990—Par. (1)(K) to (N). Pub. L. 101-627, §113(a), added subpars. (K) to (N).

Par. (5). Pub. L. 101-627, §113(b), added par. (5).
 1989—Par. (1)(J). Pub. L. 101-224 added subpar. (J).
 1988—Par. (4). Pub. L. 100-629 added par. (4).
 1986—Par. (1)(I). Pub. L. 99-659, §107(a), added subpar. (I).

Pars. (2)(B), (3). Pub. L. 99-659, §101(c)(2), substituted “exclusive economic zone” for “fishery conservation zone”.

1983—Par. (2)(A). Pub. L. 97-453, §15(b)(A), substituted “in fishing within the boundaries of any State, except recreational fishing permitted under section 1821(j) of this title” for “in fishing within the boundaries of any State”.

Par. (2)(B). Pub. L. 97-453, §15(b)(B), inserted “, except recreational fishing permitted under section 1821(j) of this title,” after “in fishing”.

1982—Par. (2). Pub. L. 97-191, §2(1), struck out “in fishing” in provisions preceding subpar. (A).

Par. (2)(A). Pub. L. 97-191, §2(2), inserted “in fishing” at beginning and struck out “or” at end.

Par. (2)(B). Pub. L. 97-191, §2(3), inserted “in fishing” at beginning and substituted “or” for “and” at end.

Par. (2)(C). Pub. L. 97-191, §2(4), added subpar. (C).

1978—Par. (3). Pub. L. 95-354 added par. (3).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102-251, set out as a note under section 773 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-191 effective June 1, 1982, see section 3 of Pub. L. 97-191, set out as a note under section 1856 of this title.

EFFECTIVE DATE

Section 312 of Pub. L. 94-265 provided that: “Sections 307, 308, 309, 310, and 311 [sections 1857, 1858 to 1861 of this title] shall take effect March 1, 1977.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971e, 1821, 1827, 1858, 1859, 1860, 1861, 3606, 5103 of this title.

§ 1858. Civil penalties and permit sanctions

(a) Assessment of penalty

Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, to have committed an act prohibited by section 1857 of this title shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) Review of civil penalty

Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the United States dis-

trict court for the appropriate district by filing a complaint in such court within 30 days from the date of such order and by simultaneously serving a copy of such complaint by certified mail on the Secretary, the Attorney General and the appropriate United States Attorney. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5.

(c) Action upon failure to pay assessment

If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) In rem jurisdiction

A fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 1857 of this title shall be liable in rem for any civil penalty assessed for such violation under this section and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

(e) Compromise or other action by Secretary

The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(f) Subpenas

For the purposes of conducting any hearing under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt or refusal to obey a subpoena served upon any person pursuant to this subsection, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(g) Permit sanctions

(1) In any case in which (A) a vessel has been used in the commission of an act prohibited

under section 1857 of this title, (B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this chapter has acted in violation of section 1857 of this title, or (C) any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any fishery resource law statute enforced by the Secretary has not been paid and is overdue, the Secretary may—

- (i) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;
- (ii) suspend such permit for a period of time considered by the Secretary to be appropriate;
- (iii) deny such permit; or
- (iv) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this chapter and, with respect to foreign fishing vessels, on the approved application of the foreign nation involved and on any permit issued under that application.

(2) In imposing a sanction under this subsection, the Secretary shall take into account—

(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(3) Transfer of ownership of a vessel, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel at the time of the transfer.

(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

(Pub. L. 94-265, title III, §308, Apr. 13, 1976, 90 Stat. 356; Pub. L. 97-453, §10, Jan. 12, 1983, 96 Stat. 2491; Pub. L. 99-659, title I, §108, Nov. 14, 1986, 100 Stat. 3713; Pub. L. 101-627, title I, §114(a), Nov. 28, 1990, 104 Stat. 4454.)

AMENDMENTS

1990—Pub. L. 101-627, §114(a)(1), inserted “and permit sanctions” after “penalties” in section catchline.

Subsec. (a). Pub. L. 101-627, §114(a)(2), substituted “\$100,000” for “\$25,000”.

Subsec. (g). Pub. L. 101-627, §114(a)(3), added subsec. (g).

1986—Subsec. (b). Pub. L. 99-659, §108(1), amended first sentence generally. Prior to amendment, the sentence read as follows: “Any person against whom a civil penalty is assessed under subsection (a) of this section may

obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary”.

Subsecs. (d) to (f). Pub. L. 99-659, §108(2), (3), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1983—Subsec. (e). Pub. L. 97-453 added subsec. (e).

EFFECTIVE DATE

For effective date of this subchapter, see section 312 of Pub. L. 94-265, set out as a note under section 1857 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 971e, 1827, 3606, 3637, 5103, 5106, 5606 of this title.

§ 1859. Criminal offenses

(a) Offenses

A person is guilty of an offense if he commits any act prohibited by—

- (1) section 1857(1)(D), (E), (F), (H), (I), or (L) of this title; or
- (2) section 1857(2) of this title.

(b) Punishment

Any offense described in subsection (a)(1) of this section is punishable by a fine of not more than \$100,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any observer described in section 1857(1)(L) of this title or any officer authorized to enforce the provisions of this chapter (as provided for in section 1861 of this title), or places any such observer or officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$200,000, or imprisonment for not more than 10 years, or both. Any offense described in subsection (a)(2) of this section is punishable by a fine of not more than \$200,000.

(c) Jurisdiction

There is Federal jurisdiction over any offense described in this section.

(Pub. L. 94-265, title III, §309, Apr. 13, 1976, 90 Stat. 357; Pub. L. 97-453, §11(a), Jan. 12, 1983, 96 Stat. 2491; Pub. L. 99-659, title I, §107(b), Nov. 14, 1986, 100 Stat. 3713; Pub. L. 100-66, §2, July 10, 1987, 101 Stat. 384; Pub. L. 101-627, title I, §115, Nov. 28, 1990, 104 Stat. 4455.)

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101-627, §115(a), amended par. (1) generally, substituting “(I), or (L)” for “or (I)”.

Subsec. (b). Pub. L. 101-627, §115(b), substituted “\$100,000” for “\$50,000”, substituted “\$200,000” for “\$100,000” in two places, and inserted “any observer described in section 1857(1)(L) of this title or” after “injury to” and “observer or” before “officer in fear”.

1987—Subsec. (a)(1). Pub. L. 100-66 substituted “(I)” for “(J)”.

1986—Subsec. (a)(1). Pub. L. 99-659 substituted “(H), or (J)” for “or (H)”.

1983—Subsec. (b). Pub. L. 97-453 struck out “, or imprisonment for not more than 1 year, or both” after “subsection (a)(2) of this section is punishable by a fine of not more than \$100,000”.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 11(b) of Pub. L. 97-453 provided that: “The amendment made by subsection (a) [amending this sec-

tion] applies with respect to offenses committed under section 309 [this section] on or after the date of the enactment of this Act [Jan. 12, 1983].”

EFFECTIVE DATE

For effective date of this subchapter, see section 312 of Pub. L. 94-265, set out as a note under section 1857 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3606, 3637, 5103, 5106, 5606 of this title.

§ 1860. Civil forfeitures

(a) In general

Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or the fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 1857 of this title (other than any act for which the issuance of a citation under section 1861(c) of this title is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) Jurisdiction of district courts

Any district court of the United States which has jurisdiction under section 1861(d) of this title shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) of this section and any action provided for under subsection (d) of this section.

(c) Judgment

If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this chapter or for which security has not previously been obtained under subsection (d) of this section. The provisions of the customs laws relating to—

- (1) the seizure, forfeiture, and condemnation of property for violation of the customs law;
- (2) the disposition of such property or the proceeds from the sale thereof; and
- (3) the remission or mitigation of any such forfeiture;

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this chapter, unless such provisions are inconsistent with the purposes, policy, and provisions of this chapter. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this chapter, be performed by officers or other persons designated for such purpose by the Secretary.

(d) Procedure

(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 1861(d) shall—

- (A) stay the execution of such process; or
- (B) discharge any fish seized pursuant to such process;

upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person (i) delivering such property to the appropriate court upon order thereof, without any impairment of its value, or (ii) paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court. Nothing in this paragraph may be construed to require the Secretary, except in the Secretary's discretion or pursuant to the order of a court under section 1861(d) of this title, to release on bond any seized fish or other property or the proceeds from the sale thereof.

(2) Any fish seized pursuant to this chapter may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

(e) Rebuttable presumptions

(1) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 1857 of this title were taken or retained in violation of this chapter.

(2) For purposes of this chapter, it shall be a rebuttable presumption that any fish of a species which spawns in fresh or estuarine waters and migrates to ocean waters that is found on board a vessel is of United States origin if the vessel is within the migratory range of the species during that part of the year to which the migratory range applies.

(Pub. L. 94-265, title III, §310, Apr. 13, 1976, 90 Stat. 357; Pub. L. 97-453, §12, Jan. 12, 1983, 96 Stat. 2491; Pub. L. 99-659, title I, §109(a), Nov. 14, 1986, 100 Stat. 3714; Pub. L. 101-627, title I, §116, Nov. 28, 1990, 104 Stat. 4456.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (c), are classified generally to Title 19, Customs Duties.

AMENDMENTS

1990—Subsec. (e). Pub. L. 101-627 designated existing provisions as par. (1) and added par. (2).

1986—Subsec. (c). Pub. L. 99-659, §109(a)(1), amended second sentence generally. Prior to amendment, second sentence of subsec. (c) read as follows: “The provisions of the customs laws relating to—

- “(1) the disposition of forfeited property,
- “(2) the proceeds from the sale of forfeited property,
- “(3) the remission or mitigation of forfeitures, and
- “(4) the compromise of claims,

shall apply to any forfeiture ordered, and to any case in which forfeiture is alleged to be authorized, under this section, unless such provisions are inconsistent with the purposes, policy, and provisions of this chapter.”

Subsec. (d)(1). Pub. L. 99-659, §109(a)(2), inserted provision that nothing in this paragraph may be construed to require the Secretary, except in the Secretary's discretion or pursuant to the order of a court under section 1861(d) of this title, to release on bond any seized fish or other property or the proceeds from the sale thereof.

1983—Subsec. (a). Pub. L. 97-453 inserted “(or the fair market value thereof)” after “fish” wherever appearing.

EFFECTIVE DATE

For effective date of this subchapter, see section 312 of Pub. L. 94-265, set out as a note under section 1857 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1417, 1861, 3606, 3637, 5103, 5106, 5606 of this title.

§ 1861. Enforcement

(a) Responsibility

The provisions of this chapter shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties.

(b) Powers of authorized officers

(1) Any officer who is authorized (by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a) of this section) to enforce the provisions of this chapter may—

(A) with or without a warrant or other process—

(i) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 1857 of this title;

(ii) board, and search or inspect, any fishing vessel which is subject to the provisions of this chapter;

(iii) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this chapter;

(iv) seize any fish (wherever found) taken or retained in violation of any provision of this chapter; and

(v) seize any other evidence related to any violation of any provision of this chapter;

(B) execute any warrant or other process issued by any court of competent jurisdiction; and

(C) exercise any other lawful authority.

(2) Subject to the direction of the Secretary, a person charged with law enforcement responsibilities by the Secretary who is performing a duty related to enforcement of a law regarding fisheries or other marine resources may make an arrest without a warrant for an offense against the United States committed in his presence, or for a felony cognizable under the laws of the United States, if he has reasonable grounds to believe that the person to be arrested has committed or is committing a felony. The arrest authority described in the preceding sen-

tence may be conferred upon an officer or employee of a State agency, subject to such conditions and restrictions as are set forth by agreement between the State agency, the Secretary, and, with respect to enforcement operations within the exclusive economic zone, the Secretary of the department in which the Coast Guard is operating.

(c) Issuance of citations

If any officer authorized to enforce the provisions of this chapter (as provided for in this section) finds that a fishing vessel is operating or has been operated in violation of any provision of this chapter, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b) of this section. If a permit has been issued pursuant to this chapter for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(d) Jurisdiction of courts

The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this chapter. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. Any such court may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

(e) Payment of storage, care, and other costs

(1) Notwithstanding any other provision of law, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, and forfeitures of property for violations of any provisions of this chapter or of any other fishery resource law enforced by the Secretary, including the Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.)—

(A) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this chapter or any other fishery resource law enforced by the Secretary with respect to that fish or other property;

(B) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this chapter or any other fishery resource law enforced by the Secretary;

(C) any expenses directly related to investigations and civil or criminal enforcement

proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings;

(D) any valid liens or mortgages against any property that has been forfeited;

(E) claims of parties in interest to property disposed of under section 1612(b) of title 19 or under other provisions of the customs laws, as made applicable by section 1860(c) of this title to seizures made by the Secretary under this chapter, in amounts determined by the Secretary to be applicable to such claims at the time of seizure; and

(F) reimbursement to any Federal or State agency, including the Coast Guard, for services performed, or personnel, equipment, or facilities utilized, under any agreement with the Secretary entered into pursuant to subsection (a) of this section, or any similar agreement authorized by law.

(2) Any person assessed a civil penalty for, or convicted of, any violation of this chapter shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation.

(f) Enforcement of Northeast Multispecies Fishery Management Plan

(1) Enforcement agreements

Beginning not later than October 1, 1993, the Secretary shall, if requested by the Governor of a State represented on the New England Fishery Management Council, enter into an agreement under subsection (a) of this section, with each of the States represented on such Council, that authorizes the marine law enforcement agency of such State to perform duties of the Secretary relating to enforcement of the Northeast Multispecies Fishery Management Plan.

(2) Reimbursement

An agreement with a State under this subsection shall provide, subject to the availability of appropriations, for reimbursement of the State for expenses incurred in detection and prosecution of violations of any fishery management plan approved by the Secretary.

(3) Coast Guard enforcement working group

(A) Establishment

The Commander of the First Coast Guard District shall establish an informal fisheries enforcement working group to improve the overall compliance with and effectiveness of the regulations issued under the Northeast Multispecies Fishery Management Plan.

(B) Membership

The working group shall consist of members selected by the Commander, and shall include—

(i) individuals who are representatives of various fishing ports located in the States represented on the New England Fishery Management Council;

(ii) captains of fishing vessels that operate in waters under the jurisdiction of that Council; and

(iii) other individuals the Commander considers appropriate.

(C) Non-Federal status of working group members

An individual shall not receive any compensation for, and shall not be considered to be a Federal employee based on, membership in the working group.

(D) Meetings

The working group shall meet, at the call of the Commander, at least 4 times each year. The meetings shall be held at various major fishing ports in States represented on the New England Fishery Management Council, as specified by the Commander.

(4) Use of fines and penalties

Amounts available to the Secretary under this chapter which are attributable to fines and penalties imposed for violations of the Northeast Multispecies Fishery Management Plan shall be used by the Secretary pursuant to this section to enforce that Plan.

(g) Definitions

For purposes of this section—

(1) The term “provisions of this chapter” includes (A) any regulation or permit issued pursuant to this chapter, and (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 1821(b) or (c) of this title, with respect to fishing subject to the exclusive fishery management authority of the United States.

(2) The term “violation of any provision of this chapter” includes (A) the commission of any act prohibited by section 1857 of this title, and (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

(Pub. L. 94-265, title III, §311, Apr. 13, 1976, 90 Stat. 358; Pub. L. 96-470, title II, §209(e), Oct. 19, 1980, 94 Stat. 2245; Pub. L. 97-453, §§13, 15(c), Jan. 12, 1983, 96 Stat. 2491, 2493; Pub. L. 99-659, title I, §§101(c)(2), 109(b), Nov. 14, 1986, 100 Stat. 3707, 3714; Pub. L. 101-627, title I, §117, Nov. 28, 1990, 104 Stat. 4456; Pub. L. 102-251, title III, §301(i), Mar. 9, 1992, 106 Stat. 64; Pub. L. 102-567, title IX, §901, Oct. 29, 1992, 106 Stat. 4316.)

AMENDMENT OF SUBSECTION (b)(2)

Pub. L. 102-251, title III, §§301(i), 308, Mar. 9, 1992, 106 Stat. 64, 66, provided that, effective on the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, subsection (b)(2) is amended by inserting “and special areas,” after “exclusive economic zone”.

REFERENCES IN TEXT

The Lacey Act Amendments of 1981, referred to in subsec. (e), is Pub. L. 97-79, Nov. 16, 1981, 95 Stat. 1073, as amended, which enacted chapter 53 (§3371 et seq.) of this title, amended section 1540 of this title and section 42 of Title 18, Crimes and Criminal Procedure, repealed sections 667e and 851 to 856 of this title and sections 43, 44, 3054, and 3112 of Title 18, and enacted provisions set

out as notes under sections 1540 and 3371 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3371 of this title and Tables.

The customs laws, referred to in subsec. (e)(1)(E), are classified generally to Title 19, Customs Duties.

AMENDMENTS

1992—Subsecs. (f), (g). Pub. L. 102-567 added subsec. (f) and redesignated former subsec. (f) as (g).

1990—Subsec. (e). Pub. L. 101-627 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “Notwithstanding any other provision of law, after September 30, 1986, the Secretary or the Secretary of the Treasury may pay from sums received as fines, penalties, or forfeitures of property for violations of any provision of this chapter—

“(1) the reasonable and necessary costs incurred in providing temporary storage, care, and maintenance of seized fish or other property pending disposition of any civil or criminal proceeding alleging a violation of any provision of this chapter with respect to that fish or other property; and

“(2) a reward to any person who furnishes information which leads to an arrest, conviction, civil penalty assessment, or forfeiture of property for any violation of any provision of this chapter.

Any person assessed a civil penalty for, or convicted of, any violation of any provision of this chapter shall be liable for the cost incurred in storage, care, and maintenance of any fish or other property seized in connection with the violation concerned.”

1986—Subsec. (b)(2). Pub. L. 99-659, §101(c)(2), substituted “exclusive economic zone” for “fishery conservation zone”.

Subsecs. (e), (f). Pub. L. 99-659, §109(b), added subsec. (e) and redesignated former subsec. (e) as (f).

1983—Subsec. (a). Pub. L. 97-453, §15(c), struck out provision that the Secretaries were to report annually on June 30, to each committee of the Congress listed in section 1823(b) of this title and to the Councils, on the degree and extent of known and estimated compliance with the provisions of this chapter during the preceding calendar year.

Subsec. (b)(1). Pub. L. 97-453, §13(1), designated existing provisions as par. (1).

Subsec. (b)(1)(A). Pub. L. 97-453, §13(2), (3), redesignated former par. (1) as subpar. (A) and, in subpar. (A) as redesignated, redesignated former subpars. (A) to (E) as cls. (i) to (v), respectively.

Subsec. (b)(1)(B), (C). Pub. L. 97-453, §13(2), redesignated former pars. (2) and (3) as subpars. (B) and (C), respectively.

Subsec. (b)(2). Pub. L. 97-453, §13(4), added par. (2).

1980—Subsec. (a). Pub. L. 96-470 substituted “annually on June 30” for “semiannually” and inserted “during the preceding calendar year” after “with the provisions of this chapter”.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-251 effective on date on which Agreement between United States and Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for United States, with authority to prescribe implementing regulations effective Mar. 9, 1992, but with no such regulation to be effective until date on which Agreement enters into force for United States, see section 308 of Pub. L. 102-251, set out as a note under section 773 of this title.

EFFECTIVE DATE

For effective date of this subchapter, see section 312 of Pub. L. 94-265, set out as a note under section 1857 of this title.

AGREEMENT TO MAKE MORE EFFECTIVE ENFORCEMENT OF DOMESTIC LAWS AND INTERNATIONAL AGREEMENTS

Pub. L. 102-582, title II, §202, Nov. 2, 1992, 106 Stat. 4905, provided that:

“(a) IN GENERAL.—Not later than six months after the date of the enactment of this Act [Nov. 2, 1992], the Secretary of the department in which the Coast Guard is operating, the Secretary of Commerce, and the Secretary of Defense shall enter into an agreement under section 311(a) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1861(a)) in order to make more effective the enforcement of domestic laws and international agreements that conserve and manage the living marine resources of the United States.

“(b) TERMS.—The agreement entered into under subsection (a) shall include—

“(1) procedures for identifying and providing the location of vessels that are in violation of domestic laws or international agreements to conserve and manage the living marine resources of the United States;

“(2) requirements for the use of the surveillance capabilities of the Department of Defense; and

“(3) procedures for communicating vessel locations to the Secretary of Commerce and the Coast Guard.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1821, 1824, 1857, 1859, 1860, 3607, 3637, 5103, 5106, 5606 of this title.

§ 1862. North Pacific fisheries research plan

(a) In general

The North Pacific Fishery Management Council may prepare, in consultation with the Secretary, a fisheries research plan for all fisheries under the Council's jurisdiction except salmon fisheries which—

(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

(2) establishes a system of fees to pay for the costs of implementing the plan.

(b) Standards

(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to—

(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be fair and equitable to all vessels and processors;

(C) be consistent with applicable provisions of law; and

(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

(2) Any system of fees established under this section shall—

(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under

subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

(D) not be used to offset amounts authorized under other provisions of law;

(E) be expressed as a percentage, not to exceed 2 percent, of the unprocessed ex-vessel value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(F) be assessed against all fishing vessels and United States fish processors, including those not required to carry an observer under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

(H) provide that fees collected will only be used for implementing the plan established under this section; and

(I) meet the requirements of section 9701(b) of title 31.

(c) Action by Secretary

(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

(d) Fishery Observer Fund

There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the

purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(e) Special provisions regarding observers

(1) The Secretary shall review—

(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and

(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that—

(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.

(Pub. L. 94-265, title III, §313, as added Pub. L. 101-627, title I, §118(a), Nov. 28, 1990, 104 Stat. 4457; amended Pub. L. 102-582, title IV, §404, Nov. 2, 1992, 106 Stat. 4909.)

AMENDMENTS

1992—Subsec. (b)(2)(E). Pub. L. 102-582 substituted “2 percent, of the unprocessed ex-vessel” for “one percent, of the”.

§ 1863. Northwest Atlantic Ocean Fisheries Reinvestment Program

(a) Program

(1) Not later than October 1, 1993, the Secretary shall establish a Northwest Atlantic Ocean Fisheries Reinvestment Program for the purposes of—

(A) promoting development of commercial fisheries and markets for underutilized species of the northwest Atlantic Ocean;

(B) developing alternative fishing opportunities for participants in the New England groundfish fishery;

(C) providing technical support and assistance to United States fishermen and fish processors to improve the value-added processing of underutilized species and to make participation in fisheries for underutilized species of the northwest Atlantic Ocean economically viable;

(D) creating new economic opportunities through the improved processing and expanded use of fish waste; and

(E) helping to restore overfished New England groundfish stocks through aquaculture or hatchery programs.

(2) CONSULTATION.—In establishing and implementing the Northwest Fisheries Reinvestment

Program, the Secretary shall consult with representatives of the commercial fishing industry, the seafood processing industry, and the academic community (including the National Sea Grant Program).

(3) **ACTIVITIES UNDER PROGRAM.**—Subject to the availability of appropriations, the Secretary shall award contracts, grants and other financial assistance to United States citizens to carry out the purposes of subsection¹ (1), under the terms and conditions provided in section 713c-3(c) of title 15, except that, in making awards under this section for projects involving participation in fisheries for underutilized species, the Secretary shall give the highest priority to a person who owns or operates a fishing vessel permitted under this chapter to participate in the New England groundfish fishery who agrees to surrender that permit to the Secretary during the duration of the contract, grant or other assistance.

(4) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated \$5,000,000 for each of fiscal years 1993 through 1997 to carry out the purposes of this section. For fiscal year 1993 no more than \$1,000,000, and for fiscal year 1994 no more than \$2,000,000, of such funds may be provided from monies made available under section 713c-3(b) of title 15.

(b) Assistance of other agencies

The Secretary shall actively seek the assistance of other Federal agencies in the development of fisheries for underutilized species of the northwest Atlantic Ocean, including, to the extent permitted by other applicable laws, assistance from the Secretary of Agriculture in including such underutilized species as agricultural commodities in the programs of the Foreign Agricultural Service for which amounts are authorized under the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624; 104 Stat. 3359).

(c) Management plans for underutilized species

The New England Fishery Management Council, in consultation with other appropriate Councils, shall develop fishery management plans as soon as possible for any underutilized species of the northwest Atlantic Ocean that is not covered under such a plan, in order to prevent overfishing of that species.

(d) “Underutilized species” defined

For purposes of this section, the term “underutilized species of the northwest Atlantic Ocean” means any fish species of the northwest Atlantic Ocean that is identified, by the Director of the Northeast Fisheries Center of the National Marine Fisheries Service, as an underutilized species.

(Pub. L. 94-265, title III, §314, as added Pub. L. 102-567, title IX, §902(a), Oct. 29, 1992, 106 Stat. 4317.)

REFERENCES IN TEXT

The Food, Agriculture, Conservation, and Trade Act of 1990, referred to in subsec. (b), is Pub. L. 101-624, Nov. 28, 1990, 104 Stat. 3359, as amended. For complete classification of this Act to the Code, see Short Title of 1990

¹ So in original. Probably should be “paragraph”.

Amendment note set out under section 1421 of Title 7, Agriculture, and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 713c-3.

SUBCHAPTER V—MISCELLANEOUS PROVISIONS

§ 1881. Repealed. Pub. L. 99-659, title I, § 110, Nov. 14, 1986, 100 Stat. 3715

Section, Pub. L. 94-265, title IV, §401, Apr. 13, 1976, 90 Stat. 359, related to authority to amend regulations to conform to Law of the Sea Treaty.

§ 1882. Authorization of appropriations

There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this chapter, not to exceed the following sums:

- (1) \$5,000,000 for the fiscal year ending June 30, 1976.
- (2) \$5,000,000 for the transitional fiscal quarter ending September 30, 1976.
- (3) \$25,000,000 for the fiscal year ending September 30, 1977.
- (4) \$30,000,000 for the fiscal year ending September 30, 1978.
- (5) \$30,000,000 for the fiscal year ending September 30, 1979.
- (6) \$33,000,000 for the fiscal year ending September 30, 1980.
- (7) \$40,000,000 for the fiscal year ending September 30, 1981.
- (8) \$47,000,000 for the fiscal year ending September 30, 1982.
- (9) \$59,000,000 for the fiscal year ending September 30, 1983.
- (10) \$64,000,000 for the fiscal year ending September 30, 1984.
- (11) \$69,000,000 for the fiscal year ending September 30, 1985.
- (12) \$69,000,000 for fiscal year 1986.
- (13) \$70,800,000 for fiscal year 1987.
- (14) \$72,900,000 for fiscal year 1988.
- (15) \$75,000,000 for fiscal year 1989.
- (16) \$77,200,000 for the fiscal year ending September 30, 1990.
- (17) \$94,000,000 for the fiscal year ending September 30, 1991, of which \$6,500,000 shall be used for enforcement and \$5,000,000 shall be used to increase research and assessment efforts.
- (18) \$98,000,000 for the fiscal year ending September 30, 1992.
- (19) \$102,000,000 for the fiscal year ending September 30, 1993.

(Pub. L. 94-265, title IV, §406, Apr. 13, 1976, 90 Stat. 361; Pub. L. 95-354, §1, Aug. 28, 1978, 92 Stat. 519; Pub. L. 96-61, §1, Aug. 15, 1979, 93 Stat. 407; Pub. L. 97-453, §14(a), Jan. 12, 1983, 96 Stat. 2492; Pub. L. 99-659, title I, §111(a), Nov. 14, 1986, 100 Stat. 3715; Pub. L. 101-627, title I, §119, Nov. 28, 1990, 104 Stat. 4459.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 94-265, Apr. 13, 1976, 90 Stat. 331, as amended, known as the Magnuson Fishery Conservation and Management Act, which is classified principally to this chapter. For complete classification

of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

- 1990—Pars. (16) to (19). Pub. L. 101-627 added pars. (16) to (19).
 1986—Pars. (12) to (15). Pub. L. 99-659 added pars. (12) to (15).
 1983—Pars. (9) to (11). Pub. L. 97-453 added pars. (9) to (11).
 1979—Pars. (6) to (8). Pub. L. 96-61 added pars. (6) to (8).
 1978—Par. (5). Pub. L. 95-354 added par. (5).

CHAPTER 39—MINING ACTIVITY WITHIN NATIONAL PARK SYSTEM AREAS

- Sec.
 1901. Congressional findings and declaration of policy.
 1902. Preservation and management of areas by Secretary of the Interior; promulgation of regulations.
 1903 to 1906. Omitted.
 1907. Recordation of mining claims; publication of notice.
 1908. Damage to natural and historical landmarks; procedures for determination and enforcement of abatement of damaging activities.
 1909. Severability.
 1910. Civil actions for just compensation by mining claim holders.
 1911. Acquisition of land by Secretary.
 1912. Financial disclosure by officer or employee of Secretary.
 (a) Filing and availability of written statements; contents.
 (b) Enforcement procedures.
 (c) Exemptions.
 (d) Violation; penalty.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 410aaa-48, 410aaa-59 of this title.

§ 1901. Congressional findings and declaration of policy

The Congress finds and declares that—

(a) the level of technology of mineral exploration and development has changed radically in recent years and continued application of the mining laws of the United States to those areas of the National Park System to which it applies, conflicts with the purposes for which they were established; and

(b) all mining operations in areas of the National Park System should be conducted so as to prevent or minimize damage to the environment and other resource values, and, in certain areas of the National Park System, surface disturbance from mineral development should be temporarily halted while Congress determines whether or not to acquire any valid mineral rights which may exist in such areas.

(Pub. L. 94-429, §1, Sept. 28, 1976, 90 Stat. 1342.)

SHORT TITLE

Pub. L. 94-429, which enacted this chapter, amended sections 123 and 450y-2 of this title, and repealed sections 350, 350a, 447, and 450z of this title, is popularly known as the “Mining in the Parks Act”.

CROSS REFERENCES

Coal land, entry of unappropriated or unreserved Federal coal lands, see section 71 of Title 30, Mineral Lands and Mining.

Exploration program for the discovery of minerals, financial assistance, see section 641 of Title 30.

Leases and Prospecting Permits—

Lands subject to disposition, see section 181 of Title 30.

Oil and gas lands, see section 226 of Title 30.

Oil shale lands, see section 241 of Title 30.

Phosphate lands, see section 211 of Title 30.

Potash lands, see section 281 of Title 30.

Sodium lands, see section 261 of Title 30.

Sulphur lands, see section 271 of Title 30.

Mineral Lands and Regulations—

Lands open to purchase by citizens, see section 22 of Title 30.

Locators' rights of possession and enjoyment, see section 26 of Title 30.

Mineral lands reserved, see section 21 of Title 30.

§ 1902. Preservation and management of areas by Secretary of the Interior; promulgation of regulations

In order to preserve for the benefit of present and future generations the pristine beauty of areas of the National Park System, and to further the purposes of sections 1, and 2 to 4 of this title, as amended, and the individual organic Acts for the various areas of the National Park System, all activities resulting from the exercise of valid existing mineral rights on patented or unpatented mining claims within any area of the National Park System shall be subject to such regulations prescribed by the Secretary of the Interior as he deems necessary or desirable for the preservation and management of those areas.

(Pub. L. 94-429, §2, Sept. 28, 1976, 90 Stat. 1342.)

CROSS REFERENCES

Disposal of materials on public lands, surface resources, see section 601 of Title 30, Mineral Lands and Mining.

Division of coal lands into leasing tracts, see section 201 of Title 30.

Leases and Prospecting Permits—

Lands subject to disposition, see section 181 of Title 30.

Oil and gas lands, see section 226 of Title 30.

Oil shale lands, see section 241 of Title 30.

Phosphate lands, see section 211 of Title 30.

Potash lands, see section 281 of Title 30.

Sodium lands, see section 261 of Title 30.

Sulphur lands, see section 271 of Title 30.

Mineral Lands and Regulations—

Assignment or subletting of leases, see section 187 of Title 30.

Cancellation of prospecting permits, see section 183 of Title 30.

Limitations on leases held, owned or controlled by persons, associations, or corporations, see section 184 of Title 30.

Prescription of rules and regulations, see section 189 of Title 30.

Reservation of easements or rights-of-way for working purposes, see section 186 of Title 30.

Rights-of-way for pipelines, see section 185 of Title 30.

§§ 1903 to 1906. Omitted

CODIFICATION

Section 1903, Pub. L. 94-429, §4, Sept. 28, 1976, 90 Stat. 1343, provided for a 4-year cessation of certain mining operations within the boundaries of Death Valley National Monument, Mount McKinley National Park, and Organ Pipe Cactus National Monument, subject to exceptions.